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**To give the differend its due:
damages/distress**

Simon Wortham

The purpose of this essay is less to propose a new reading of *The Differend* itself than it is to situate this major work by Lyotard in terms of the debates that have surfaced in more recent years concerning not only his politics but that of a generation of thinkers broadly associated with post-structuralism in general, often by contemporaries from the French intellectual left whose translation into English frequently occurred some time after certain battle lines had effectively been drawn. More specifically, recurrent and sustained criticism of Lyotard by Jacques Rancière is based on claims that the particular brand of Kantianism practised by Lyotard entails a diminution of the political thrust of Enlightenment thought, notably the philosophy and aesthetics of the German tradition, which is itself taken as indicative of an entire trend among those thinkers who broke ranks with Marxist leftism during the 1960s. From such a perspective, the move away from a defining and constitutive relationship to Marxism could be seen—then, as now—to merely reduce the chance of political emancipation rather than reconsider its conditions of possibility.

The first section of the essay summarises key elements of Rancière's position on Lyotard, the latter often providing a critical point of departure for the former's own thought. It then focusses more specifically on a relatively minor text by Lyotard that seems to draw regular attack on Rancière's part, sometimes providing the platform for larger arguments, in order to evaluate the accuracy of the latter's claims. If Lyotardian politics are indeed, as Rancière hints, lamentably regressive, bound by the repetition of trauma giving license to a sense of redemptive entitlement that in turn actually impedes radical political action, then in what way does Lyotard's 1993 Amnesty lecture support this characterisation? It is in this context that the second section turns to *The Differend* to show how this major work in fact relates to some of the actual material found in 'The Other's Rights', presented in Oxford a decade after original publication of Lyotard's book. In particular, it offers some thoughts on the relationship between the 'distress' that for Lyotard accompanies human civility as a political proposition and the question of a 'wrong' that cannot be litigated when one considers both the horror of Auschwitz and Holocaust denial. The essay closes by recalling Derrida's 1999 memorial talk on Lyotard, which powerfully reprises the question of the politics of mourning via sustained reflection on the Lyotardian injunction, 'there shall be no mourning'.

I. The Other's Rights

For several years now the 'ethics-of-the-Other' position that, for some, recalls post-structuralist thought more generally has been the subject of particular critique. One proponent of this criticism has been Jacques Rancière. One of the places Rancière tends to ground such a critique is Lyotard's interpretation of the Kantian sublime and his assessment of its 'modern' importance. As is well known, many have sought to recuperate the idea of art's singular resistance to appropriation, notably through reference to the Kant's notion of sublimity. In *Aesthetics and Its Discontents*¹ Rancière argues that what is at stake in Lyotard's attempt to radicalise the sublime by emphasising an 'irreducible gap between the idea and the sensible' is the effort to define modern art as that which testifies to 'the fact of the unrepresentable,' which, in turn, licenses the founding of an 'ethical community' (20–1) on the basis of the aesthetic. Such a 'community' is 'ethical,' for Rancière, insofar as it is constructed upon the supposed ruins of those discourses of collective, political emancipation to which the aesthetic form of art was hitherto powerfully linked.² Rancière rejects what he sees as the Lyotardian sublime's concern to place modern or 'avant-garde' art at an absolute distance from the everyday world. For Rancière, such detachment is not that of an alienation effect, replete with the 'promise-carrying contradiction' (42) that paves the way for political emancipation. Instead, he argues, sublimity of the Lyotardian stripe binds us to an absolute alterity which can neither be reconciled nor overcome. The 'enigma' of the work formed by the world's contradictions is, for Rancière, thereby recast in terms of an impossible testimony to the power of the 'Other'. For Rancière, then, the 'ethical' task of such impossible witness testifies to the constitutive state of ruination that supposedly *is* modern art,³ but also provides the (quasi-messianic) paradigm for keeping alive 'the memory of catastrophe' – twentieth-century 'catastrophe' in particular – without any capacity for developing new means of politics or 'becoming-life'.

Rancière's argument against Lyotard's Kantianism is that, insofar as the sublime in Kant does not refer to an artwork as such but rather to the experience of imagination's incapacity before reason,⁴ it places us in the domain of morality and not aesthetics. The sublime reminds reason of its superiority over nature and indeed its 'legislative vocation in the supersensible order' as Rancière puts it, thus leading out from the realm of art into 'the ethical universe' (89).⁵ Further, for Rancière, Lyotard twists Kant's thought such that imagination's shortcomings in the face of the sublime encourage not so much 'the autonomous law of the legislative mind' as 'subordination to the law of alterity' or heteronomy.⁶ As such, the 'ethical' experience of the aesthetic sublime amounts to profound and insurmountable servitude to the 'Other' (93–4). Rancière turns to Schiller's *Letters on the Aesthetic Education of Man* as, for him, the better example of inheritance in regard to Kantian aesthetics, insofar as Schiller reveals rather than effaces their emancipatory potential. Here, Rancière argues, it becomes clear that all aesthetic experience, whether it be of the sublime or the beautiful, suspends both the law of understanding that necessitates conceptual determination and the law of sensation that entails a desired object.

If aesthetic experience *tout court* thereby ‘suspends the power relations which usually structure the experience of the knowing, acting and desiring subject’ (97), Rancière discerns in such experience freedom’s promise rather than the condition of servitude. Be that as it may, since there is never simply harmonious ‘agreement’ of the faculties in aesthetic experience, but instead a break with any such agreement each time the aesthetic is involved, Rancière disputes the necessity of Lyotard’s specific appeal to the sublime. Attraction and repulsion, agreement and disagreement, agitation and repose – for Rancière, such ‘dissensual’ tensions reside not merely in the sublime as a form of aesthetic experience profoundly distinct from that of the beautiful, but instead strike at the very heart of aesthetic experience as such. And, as Rancière argues, it is just this dissensus that permits Schiller to attribute political capacity to the aesthetic state. For him, aesthetic experience fosters a common sense of the dissensual in that it powerfully undermines the class distinctions and hierarchies that hitherto tied art to the established order of the world, while at the same time exposing ‘distant classes’ to precisely the experience of their own ‘distance’ within the specific distribution of the sensible. Yet if, as Rancière argues, the aesthetic (that of the beautiful *as much as* the sublime) was always characterised by an internal movement of dissensus – as a movement that is replete with politics – then how is it possible for him to distinguish and isolate the sublime as that which encourages simply a politically conservative movement of separation, a more or less inert form of withdrawal rather than politically charged distantiation? Just as engaged art – by desiring outreach or extension to the point of its own disappearance – propels itself towards new forms of life by dint of a movement for which aesthetic experience might be another name, so surely the sublime, to the extent that it must participate in this same dissensual structure of the aesthetic, cannot be entirely emptied of transformative political capacity?

Be that as it may, by the last chapter of *Aesthetics and Its Discontents* the ethics of the ‘Other’ are read deeply into the contemporary situation of global politics. Here, since the absolute rights of the absolute victim – those powerlessly subjected to ethnic cleansing, religious persecution, sectarian warfare, or other forms of extreme victimisation – have become ‘the absolute rights of those without rights’, it has been deemed necessary for the rights of the ‘other’ to be transferred to and exercised (indeed, avenged) by the ‘ethical’ community, for example through humanitarian intervention, international peace-keeping forces, the war on terror, and so forth. For Rancière, such a situation radicalises catastrophe or ‘disaster’ since by dint of the ‘affirmation of a state of exception’ which in fact renders inoperative ‘politics and right’ in their classical forms, all we are left to hope for is some ‘messianic’ answer to despair. Yet forward-lookingness is relatively weak against the interminable memory of unrepresentable evil, of a catastrophic past extending itself seemingly endlessly into a desperate present. It is through a reading of Lyotard’s 1993 lecture for Amnesty International, ‘The Other’s Rights’, that Rancière sees this situation captured perfectly. He argues that what opposes and seeks to violate this absolute right of the other is, in Lyotard’s thought, the will to master the unmasterable, and to thereby attain self-mastery (a ‘will’ in Lyotard’s work that, for Rancière, takes us far too directly from the

Enlightenment to Revolution and then Nazism).⁷ Since what is at stake in this ‘will’ is a refusal to bear witness to the law of the ‘Other’ it is therefore to be resisted, from the ‘ethical’ perspective, by ‘infinite justice wielded against infinite evil’, in Rancière’s ominous phrase from *Aesthetics and Its Discontents* (130) – a configuration of ethics that for him strongly suppresses the radical promise of emancipatory politics.

While Lyotard has of course written extensively and complexly on the sublime in a number of major texts, Rancière’s condemnation of Lyotardian sublimity often revolves around just this short talk he gave as part of the Oxford Amnesty International Lectures in 1993.⁸ This occurs not just in *Aesthetics and Its Discontents* but also, for instance, in *The Politics of Aesthetics and Dissensus*. The reference is recursive, to say the least. While the decision to repeatedly ground much larger arguments on a comparatively minor work may strike some as odd, it is therefore worth revisiting this lecture in some detail in order to evaluate properly Rancière’s criticisms. From its opening paragraph, Lyotard’s lecture evokes the ‘other than human’ which founds the possibility of human rights. Such rights, Lyotard argues, accrue only at the point at which ‘the human is other than *a* human being,’ that is to say more than just basic or bare human life. As its primary historical instance, this ‘other’ or excess of the human is embodied in the notion of the citizen. Lyotard affirms that it is only on condition of being other-than-human that such a being may become ‘an *other* human being’ within the social realm of the community: ‘Then “the others” can treat him as their fellow human being’ (136). If what makes human beings alike is ‘the fact that every human being carries within him the figure of the other’, then this ‘other’ emerges as the other-than-human in the other human that I also am. As such, it arises not as some primeval origin, divine enigma, or source of ancient debt. Instead, it is simply the conditional situation of citizenry in general, which – in a way that is surely not entirely remote from Rancière’s thinking of dissensus – Lyotard formulates outside of notions of the absolute identity of the social bond.⁹ (One implication of such citizenry as it occurs in Lyotard, of course, is that one never attains ‘full’ citizenship pure and simple, citizenship without remainder, since the figure of the citizen is also that of the ‘*other than*’, meaning that human lives can never be unproblematically reduced to the citizen-form to which they nevertheless tend but instead always risk its ‘beyond’ precisely to the extent that they partake of citizenry in some form.)

What is the basis of this ‘*other than*’ of the human? For Lyotard, the communicability which underpins human interlocution is characterised by a certain heterogeneity, in that human language entails forms of address which are necessarily dissymmetrical: I speak, you listen (and, alternately, vice versa). While animals can instinctively and sensorily ‘merge into a community based on signals’, the very circumstances of interlocution mean that human beings cannot (138). This is a distinction that contemporary animal studies (in philosophy and elsewhere) would doubtless question, establishing as it does an instinctual and sensory identity for the ‘animal’ in contrast to the ‘human’. Be that as it may, what in one sense founds human community (the other-than-human in me which makes me an-other human) also establishes the frontiers of

communal identity, or in other words the limit of the community's integrity or coherence as such. It does so precisely to the extent that what establishes the possibility of civil life is the heterogeneity and dissymmetry which grounds the operations of language or speech construed as a form of address to another. It is only with the reduction of the human being to bare life, or in other words the fall into complete non-citizenship, that the principle of heterogeneity established by human language is diminished. Or, rather, vice versa, as Lyotard puts it: 'only when the impossibility of interlocution' arises are we reduced 'to that meager resource' (138). Consequently, just such a human 'we' is therefore a product or condition of human interlocution, rather than the origin that founds its possibility. This is not to imply, since language and community do not derive from a prior human 'we' or an essential 'humanity', that the origin of the 'human' is non- or inhuman in the form of some divine or primordial Other to whom we are therefore impossibly indebted. Instead, it simply affirms that the 'other' in me and in the other, which founds the possibility of human communicability and citizenry, is the necessary supplement to that possibility itself. It is not in any simple sense previous or external to but coterminous with the making of civil life.

For Lyotard, then, 'the citizen is the human individual whose right to address others is recognized by those others' (138). The formulation of the human being as other-than-human/an-other-human, routed through the dissymmetry or heterogeneity of interlocution, is not equated with a law of the Other that is in any simple sense prior to or outside of the 'human' as its 'divine' or mystical origin. Instead, it is explicitly linked to the specific historical forms that civil society *will have taken*, entering-in as a decisive yet non-integratable element. If the principle of the right to address the other, and of the other's recognition of this right, founds the historical possibility of human society in its modern sense, whether it be 'the Greek *politeia* or the modern *republic*' (138), this possibility profoundly partakes of the future anterior, to the extent that in its very form or structure the 'model' cannot be spatially closed or temporally frozen since the heterogeneity which permits the interlocution of citizenry places a limit on the community's coherence, stability, and identity (in other words, restricting what Rancière would perhaps call consensus) thus opening onto other possibilities, other futures, other forms of 'human' organisation and interaction, for good or ill. Nonetheless, Lyotard asserts that while the social and geopolitical extension of civility may be promoted, constrained, or otherwise managed by various means (of which there are many examples throughout history: 'an obligatory single language, an official language alongside which traditional languages are tolerated, compulsory multilingualism, effective multilingualism, and so on'), ultimately such strategies only determine how interlocution eventually extends, rather than being able to quell its extension more radically (140).

Amid model social forms, it is for Lyotard the 'republican principle' in particular which introduces 'civic interlocution' into the community, and which therefore maintains the principle of heterogeneity or alterity in the realm of human communication. Without it, he suggests, the

‘demos’ or ‘demotic’ in its pure form risks a fall into absolute consensuality. For Lyotard it is the ‘nation’ (presumably in its most ‘nationalistic’ form) that in modern terms most recalls such a situation. Here, alterity is excluded through a process of non-recognition in which the excluded is precisely not recognised as an other (Rancière would presumably have trouble disputing this analysis of exclusion since he frequently reminds us of it). Now, for Lyotard, the republican principle is avowedly ‘contractual’. As such, the ‘Other’ it maintains within the social form that the community takes is not that of an ancient or divine law preceding human sociability and interlocution in absolute terms. Instead, it arises on the strength of a ‘civil’ agreement between humans concerning the right to speech and the radical dissymmetry of address – even if, amid the heterogeneity of civil ‘time’, such an ‘Other’ facilitates (and indeed puts at risk) that agreement as much as epitomising it. I have the right to address you, and you me, a right established prior to any inkling that we may agree. Hence the heterogeneous time of the ‘civil’, which makes its agreement prior to the very possibility of agreement. Indeed, what binds ‘us’ is the fact that *on principle* we may never be bound by anything other than the principle enshrined in the republican ‘contract’ – that of heterogeneous speech and dissymmetrical address, to which we will have unconditionally agreed without having agreed to it.

It is in light of these remarks that Lyotard evokes the ‘forgotten’, a term upon which Rancière dwells in order to mount his increasingly florid critique of Lyotardian thought as perhaps the most hyperbolic form of post-structuralism’s discourse of the Other. Here, though, the term arises in the context of a fairly down-to-earth explanation of Amnesty’s precise vocation, which Lyotard is careful not to inflate or overstate, describing it as ‘minimal’ and yet ‘decisive’ precisely within the limits of its own specificity. *Amnestos*, he writes, means the one who is forgotten:

Amnesty does not demand that the judgment be revised or that the convicted man be rehabilitated. It simply asks that the institution that has condemned him to silence forget this decree and restore the victim to the community of speakers. (141)

While Lyotard does not say as much, logically speaking the restoration of interlocutory relations and rights might not just mean release without question. It might also take the form of a fair trial, proper rights and conditions in prison, insistence upon the legal accountability of the State, and so forth. To recall the forgotten in such contexts does not so much appeal to some primordial law of the Other, but first of all reaffirms the fundamental principle of the civil contract. The other’s rights, to reprise Lyotard’s title, are in this sense not those of some absolutised Other but refer instead to those rights which makes the ‘civil’ possible, possible among all of ‘us’ (rights which would seem especially important since, however it may be determined, the extension of the ‘civil’ cannot be curbed).

To the extent that remembering the forgotten is, here, the particular task of Amnesty as a human rights organisation, such recollection is therefore less a matter of hyperbolic melancholy or

paralysing obligation, testifying to itself in the enigmatic name of an absolute Other. Instead, perhaps more prosaically (or rather, more ‘minimally’ yet ‘decisively’), Amnesty’s task of vigilant non-forgetting is ‘in accordance with the provisions of the public law of the republican democracies’ (141) – that is, law founded on the right to speech and the capacity of address. The law of the republic establishes duty as much as right, yet such duty is not the debt of the absolute *arche*; it occurs instead because the right of the human being as other-than-human/an-other-human is by definition not natural but is rather ‘merited’ through the interlocutory conditions that the civil contract aims to guarantee. Within this model of interlocutory civility, silence does not commemorate the ‘Other’ as the absolute resource of a pure enigma. It is simply the condition of possibility of address. For instance, for Lyotard it is only through recognising the value of his own silence before the teacher’s address – a silence which Lyotard equates with a certain productive ‘distress’ – that the pupil in his turn earns the right to speak (in a phrase that the Rancière of *The Ignorant Schoolmaster*¹⁰ must have blanched at, Lyotard argues that ‘the exaltation of interactivity as a pedagogic principle is pure demagogy’ (142) — perhaps it is this, as much as some erroneously detected trace of a commitment to ethical consensuality, that fuels Rancière’s attempt to dismiss Lyotard’s politics).

Whether or not the relationship of Rancière’s thought to that of Lyotard might be understood in terms of a differend that reinvoles the dissymmetry of instruction and address which would itself repeat, on the former’s terms, the severance of emancipatory politics from an ethics of the Other, one hesitates to see how the dispute between them grants access to the pure optimism of ‘dissensus’¹¹ when the Lyotardian ‘distress’ one might detect in Rancière’s position may also convey a somewhat fraught desire to stifle the sublime, to reduce it as constitutive of a pure impediment to emancipatory politics. The double gesture on Rancière’s part of, on the one hand, a refutation of the sublime (as) blockage itself, and, on the other, the semi-repressed inclusion of the sublime within a ‘Schillerian’ aesthetics of emancipation would indeed hint at this predicament.

II. The Differend

What does the distress of ‘The Other’s Rights’ have to do with the differend? If the former names the dissymmetrical communication that Lyotard finds at the basis of a civil politics marked by heterogeneity rather than consensuality, how does that relate to the radical incommunicability that, for him, points to the existence or experience of a differend as that which distinguishes the irreconcilable fortunes of the victim and the plaintiff? In what ways is such ‘distress’—as something that is characterised non-negatively by Lyotard—not merely the sign of a ‘wrong’? Before addressing this question, let us recall some of the main arguments of *The Differend* itself.

For Lyotard, a wrong (*tort*) is not simply equivalent to a damage, but is instead accompanied—and indeed defined as much as it is compounded—by the loss of those means required to prove the damage (5). The distinction between a damage and a wrong therefore separates the petitioner, who may incur damages (for example through a legal process), from the victim, who may not. Thus, a wrong may entail the deprivation of a life that might otherwise be needed to demonstrate the wrong, or the removal of liberties to the same effect—for instance, denial of access to free expression in public, withdrawal of the right to testimony or cancelling of the possibility of testimonial authority. The existence of a wrong is characterised, in other words, by the lack of a proper tribunal. In this absence, the injured party—should they still choose to speak out—may be told their complaint is merely false or, perhaps more insidiously, that precisely because of the witness they bear, whatever damage they have incurred does not amount to a wrong but merely a damage (in which case, the testimony of a wrong is itself open to the charge of falsehood, and the damage placed in question). An insurgent type of adjudication therefore takes hold, one which insists on a double bind at the very moment it apparently distinguishes between the presence and absence of a wrong: if a witness is not the victim of the wrong they claim to have suffered, they are either deceived or dishonest; if they are, the testimony itself nevertheless eliminates the possibility of the wrong that is claimed, and once more the witness is placed in the position of a dupe or a liar.

This lose-lose situation is broadly symmetrical with the story of the fee that Protagoras demands from Euathlus, which the pupil refuses to pay until he wins in a dispute with the master, the latter providing compelling evidence of the teacher's worth (6). Protagoras's response is not simply that—on Euathlus's own terms—whether the teacher wins or loses the argument, his mastery is confirmed so that payment is due either way. From such a point of view, Euathlus would always lose the argument and pay, because he would always have won (i.e., unquestionably benefited thanks to teaching whose mastery is indisputable), even if never winning. It is in another sense, however, that the dilemma Protagoras poses makes litigation an impossible prospect. Should Euathlus win the litigation in support of withholding the fee, he would have won at least once against Protagoras, and again would have to pay precisely as the consequence of a judgement in his favour (albeit judgement which rests on the insurgency of an adjudicative double bind). Euathlus is thus a victim because he loses the means to benefit from a trial, since the very possibility of winning his case is eliminated in advance; indeed, such an impossibility is confirmed, paradoxically, by his victory—in the same way that the very fact of testimony supposedly eradicates the chance of a fundamental wrong.

Of course, as is suggested through the example of the dilemma proposed by Protagoras, victimhood also occurs when damage and judgement conspire in a single place, person or body—when the author of one's suffering is also one's judge. Equally, though, a wrong does not entirely depend on this conspiracy in the sense it can also occur by securing the 'deafness' of judges as much as by silencing witnesses or insinuating the speciousness of testimony—in

Lyotard's terms, by creating a situation in which it is as if there were no referent whatsoever, and by implication no author, no authority: 'nobody to adduce the proof, nobody to admit it' (8), no argument that cannot be deemed absurd, no victim that testimony can produce without self-defeating paradox, no wrong that can be attested to as such without an indefensible and defenceless lapse of reason. Again, the judgement that passes in these circumstances is of an insurgent type. No referent equals no recognisable plaintiff yet also, therefore, no requirement for a defence or a judge in the full or proper sense but instead simply the self-evidence of a collapsing case, which nonetheless delivers the most damning of verdicts. In this same impossible situation, divested of the means of legal argumentation that ground the possibility of a prosecution, the victims of the extermination camps are left to prove the extermination themselves, having to hand only the testimony which always already undermines their case, driven into vengeful justice by the logical impossibility of reparation. Nuremberg itself is contaminated by this situation not only because the means to prove the crime have been obliterated but because the very existence of the trials is predicated, according to the accused, on Allied victory in a European civil war, which merely recreates the circumstances whereby the judge—being the more fortunate war criminal—is at once author and adjudicator in the case at hand. Hence the radical dilemma of the Nuremberg trials is that—still engulfed by the crisis they sought to adjudicate—the proceedings could not easily be 'transformed into a litigation and regulated by a verdict' (56). This was instead accomplished, writes Lyotard, by the formation of the State of Israel, by means of which the survivors converted the differend into litigious thinking and action, and the wrong into damages (albeit the State of Israel is still haunted and conflicted, he suggests, by the insistence upon a wrong that cannot by definition be established through recourse to consensuality and, as such, one that is irresolvable within the realms of international law).

Lyotard names the differend that case, therefore, where the dispute between two parties cannot be met in terms of any neutral medium or shared ground existing between them,¹² but instead where the 'regulation' is itself dominated by the idiom of one of the parties at the expense of the other, in whose own idiom the wrong that is claimed does not signify at all. What is at stake in the extermination is therefore ultimately not the destruction of individuals but the deprivation of an ability to speak—or, rather, the wholesale devastation of one's capacity to maintain a relation to speech, including silence. If it is for good reason that survivors rarely speak, their victimhood nevertheless denies them the option of keeping quiet as, for instance, a form of witnessing that rejects the ruse of testimony; the differend in this case seeks to totally undermine the victim's idiomatic relationship to signification in all its possibility. If the survivors are reduced to silence, in other words, this cannot signify any more than their words (except on the terms of the other). Hence incarceration silences speech, torture makes it involuntary, while trials effectively erase the difference between the two since recourse to either speech or silence effectively invalidates the wrong. 'To give the differend its due',¹³ writes Lyotard—in other words, to reckon with its implications in the fullest sense—necessitates the institution of 'new addressees, new addressors,

new significations, and new referents in order for the wrong to find an expression and for the plaintiff to cease being a victim'; that is, to remove the conditions of victimhood itself, which entails loss of the means to prove damage. In turn, this 'requires new rules for the formation and linking of phrases' (13). Phrase regimes constitute not only linguistic but also extra-linguistic configurations (of course, this distinction is entirely problematic) which organise and regulate the production of knowledge and representation, and constructions of subjectivity and social action. To the extent that they are pervasive, they determine the conditions not only of reference, signification and address, but also of silence and exclusion. Untranslatabilities persist across heterogeneous phrase regimes, with numerous political effects and consequences; nevertheless linking is crucial for phrases themselves. Lyotard shows that linking is necessary but contingent in practice and hence political. The differend names the problem of linking between rather than just within genres of discourse, since rules do not exist for the former in the way they do for the latter. Where the differend meets the linking of phrases across genres, then, one is always more liable to find conflict, violence, domination, appropriation, effects of incommunicability and crises of legitimation. It is in this sense that, in order to counter or supplant what is unjust in the exercise of a differend, new rules are required for the formation and linking of phrases.

Could it be that the 'distress' alluded to in 'The Other's Rights' *as something like the radical originality of the future anterior of civil politics* might in fact presage those 'new rules' for the linking of phrases that would indeed 'give the differend its due'—neither to merely reinforce nor entirely eliminate it as such, but instead to demonstrate the possibility of transformation on the basis of the differend itself? Just a few years after the English translation of his major work, is this what Lyotard was actually speaking about in Oxford in 1993—the idea that those 'new rules' *will have been* the historical condition of the modernity they potentially reconfigure?

What does this mean for 'Auschwitz' as, in Lyotard's terms, a sign that remains to be 'phrased'; the sign of a wrong that cannot be litigated but must still somehow be addressed, or at any rate must find 'new addressees, new addressors, new significations, and new referents in order for the wrong to find an expression and for the plaintiff to cease being a victim'? What, for instance, might the future anterior of a civil politics resting on the human 'other' as the basis of rights contribute to some kind of thinking of a resolution to the predicament of Israel? Doubtless the constitutive role of 'distress' in Lyotard's lecture on 'The Other's Rights' is potentially extremely troubling for any discussion on this topic, but nevertheless the possibility that the 1993 talk does suggest a way of giving the differend its 'due' in imagining the future anterior of longstanding political traditions and problems implies that the connection between the two texts is worth pursuing.

Lyotard writes: 'The silence that surrounds the phrase, *Auschwitz was the extermination camp* is not a state of the mind, it is the sign that something remains to be phrased which is not, something which is not determined' (57). Lyotard's allusion is to Kant, for whom a sign is not a

referent to which significations accrue that can be validated in terms of the cognitive order; instead, such signs indicate something that, while it should be able to be phrased, cannot find an accepted idiom (56). The corollary of such a sign (instead of a referent) is an addressee to whom clings the sense of ‘an unresolved problem, an enigma perhaps, a mystery, a paradox.—This feeling does not arise from an experience felt by a subject’ (57). The silence that engulfs Auschwitz has to do with the specific conditions of Holocaust denial but also, as Adorno shows, relates to its status as a model rather than an example for philosophical enquiry engaged with the problem of historical thought after Hegel. Whereas the example would merely illustrate a dialectical idea while having no necessary relation to it, the model is not illustrative but instead names a kind of ‘para-experience’ in which dialectics encounters the non-negatable negative which cannot be converted into a dialectical ‘result’ (88). Whereas negative dialectics liberate those names that would illustrate its own movement, the model brings speculative discourse to a standstill so that ‘Auschwitz’ cannot take place as such a name. It can thereby neither acquire the permanence of a referent nor undergo sublation in the interests of a concept (88). Lyotard writes:

If, after “Auschwitz,” the *Resultat* is lacking, it would be for want of determination. “Auschwitz” would have no speculative name because it would be the proper name of a para-experience or even of a destruction of experience. What determination would Auschwitz be lacking so as to turn it in an experience with a *Resultat*? Would it be that of the impossibility of a *we*? (97)

In the concentration camps, he observes, the possibility of a subject in the first-person plural was eliminated. Such a subject could not therefore name itself in seeking to name ‘Auschwitz’—there could be no recourse to ‘we’ in the description or memory of the camp, no collective witness or even mute solidarity but instead a sort of unnameable shame triggered by the testimony of others. The obliteration of such a ‘we’ strikes at the notion of human civility and the founding conditions of modern nation-states, since it is the articulation of ‘we’ that establishes a commutable relation or identity between the addressor and addressee of the political contract in the form of a collective name that legitimates the state-form itself. This ‘we’ is shattered at the point the deportee is converted into its absolute exception; if the authority of the SS constitutes something like the insurgent remains of that ‘we’ from which ‘the deportee is excepted once and for all’ (101), then it is also devastated by the exception it commands. The deportee does not function as the recipient of an SS order to die since their life is considered illegitimate—effectively a form of non-life—from the outset (‘the SS does not have to legitimate for the deportee’s benefit the death sentence it apprises him or her of’), leaving a situation in which the ‘norm’ phrased by the SS is ultimately yet contradictorily self-addressing.¹⁴ For if it is in fact the death of the Jew that is obliterated in the extermination camps—or, as Lyotard puts it, ‘there is nothing to kill, not even the name Jew’—then the Nazi ‘we’ undergoes radical dispersion at the very point ‘my law kills those who have no relevance to it’ (101). The linkage between addressor and addressee is completely fissured not only by the radical exception made of the Jew, but by

the disjuncture that links the component parts of the extermination which goes under the name of the SS.

The ruination of a 'we' except as posthumous possibility or memory—or rather, perhaps, a de facto simulacrum of a certain 'humanity' which after Auschwitz can only be named in terms of its extinction as a name (101)—constitutes itself as the terrible sign of a differend. Nonetheless, the dissymmetrical address alluded to in 'The Other's Rights' may provide the (quasi-) basis for an alternative legacy found in the very formation of civil politics which might itself convert or 'rephrase' this differend, precisely since that politics rests on the emergence of an otherness that in fact conjures the conditions of speech out of those of silence, transforming 'distress' into 'rights' without recourse to the type of contractuality that might repress and compound a 'wrong' by seeking to litigate it.

III. The Work of Mourning

In *The Work of Mourning*, which gathers together an array of mourning writings by Derrida devoted to a host of thinkers including Barthes, de Man, Foucault, Althusser, Deleuze, and Levinas, we find two texts on Lyotard.¹⁵ One, barely a couple of pages long, published in *Libération* immediately after Lyotard's death, understandably includes little of substance on Lyotard's work, although tellingly Derrida speaks on more than one occasion of Lyotard's writings on childhood, and on childhood tears. If space allowed, much might be said of this choice or decision on Derrida's part, not least since in 'The Other's Rights' the 'mute' distress which pertains to the situation of the *infantia* remains long after 'our native prematurity' (147), precisely since we owe to this very same childhood 'distress' the ability to speak and to question, as well as the capacity to be welcomed and acknowledged (but also unreckonably changed) within civil life. The second text devoted to Lyotard in the volume, initially presented at the Collège international de philosophie in Paris almost a year after Lyotard's death, is lengthier. It approaches the question of mourning by concentrating with some rigour on Lyotard's own remarks on the subject. Here a certain phrase, found in a short essay by Lyotard included in a special issue of a French journal devoted to Derrida's work, recurs: 'There shall be no mourning'. How – if at all – are we to read such an injunction, asks Derrida? For whom – if anyone – is it meant? What exactly does it prohibit and – if anything – what might it nevertheless make possible?

It is not the manly rejection of excessive sentiment that is at stake here. Instead, the prospect of planned, organised mourning seems most under attack in this phrase, one that is also the very medium of a particular interaction between Derrida and Lyotard (found, as it originally is, in an essay that was in a certain way a reply to Derrida, being repeated here over and again in a text much concerned with their friendship).¹⁶ For the *project* of mourning – mourning construed as a

concerted ‘work’ or ‘instituted commemoration’ in Derrida’s text (217) – would negotiate the absolute obligation to the dead, to which Derrida alludes in a footnote, only by way of a political pragmatism that is itself rebuffed by the phrase ‘there shall be no mourning’.¹⁷ In Lyotardian terms, as Derrida puts it, organised mourning risks converting the differend of the dead into the possibility of litigation, itself transforming what seems an unreckonable ‘wrong’ into calculable ‘damages’.

Yet, for Derrida, the ‘grammaticality’ of the line as much as its ‘meaning’ is of particular interest: ‘there shall be no mourning’ is less a constative statement than a normative or prescriptive phrase. In fact, it is less a normative phrase – in the sense that the former tends to control its own performativity in advance, formulating or effectuating by itself the legitimation of those obligations that it demands – than it is a prescriptive one. For the latter entails ‘a further phrase [that] is left to the addressee’, as Derrida puts it: in the case of Lyotard’s ‘there shall be no mourning’, the reader. In its very structure, then, the prescriptive phrase calls for the response of an addressee, therefore entailing an obligation (even if it may be quasi-absolute, in view of the dead) that is also a freedom of sorts, a freedom of the one who is obligated, as Lyotard himself observes. In a ‘quasi-grammatical way’ the phrase therefore constitutes a form of address that demands reading, albeit ‘reading’ that founders to some extent upon its own impossible desire for knowledge as to the motivation – that is to say, the destination or addressee – of such a phrase (219). For Derrida, nonetheless, this impossible experience given to the reader by the phrase itself is tantamount to that of mourning. Mourning thus reinhabits the phrase as the very mark of its readability: ‘Readability bears this mourning... This mourning provides the first chance and the terrible condition of all reading’ (220). To the extent that Derrida mourns Lyotard by reading him, such mourning only occurs – can only occur – under the impossible jurisdiction of the phrase ‘there shall be no mourning’, an impossible injunction quite at odds with mourning in its planned or organised form in the sense that its prescriptive ‘no’ disorganises the very experience it at once rejects and calls for, discounts and necessitates.

If organised mourning aligns fundamentally with political pragmatism (in a footnote, Derrida writes that ‘death obligates’ in a form that is ‘unconditional’ to the extent that, in contrast, ‘one can always negotiate conditions with the living’ – death, however, ‘ruptures’ this ‘symmetry’ (223–4)), then the phrase ‘there shall be no mourning’ opens at least the possibility of another politics. In their introduction to *The Work of Mourning*, Pascale-Anne Brault and Michael Naas observe that ‘the genre of the funeral oration’ (with which Derrida’s various eulogies, letters of condolence, newspaper tributes, memorial essays, and other mourning writings cannot help but engage) is ‘more than a powerful genre within an already given social and political context; it consolidates the very power of that context, with all the promises and risks it entails’ even up to the point where it may be said – alluding to such texts as Plato’s *Menexenus* – that ‘politics is related to, or founded on, mourning’ (19). To the extent that the phrase ‘there shall be no mourning’ itself invites another mourning outside of the organised forms mourning takes in its

established relationship with conventional politics and political conventions (for example, those of the fraternal tradition), it entails neither a retreat from politics as such nor any possibility of maintaining the political status quo. Instead it concerns a new or rather unrecognised form of the ‘political’ beyond ‘politics’; for instance, going beyond those forms of mourning-politics that may be negatively coded as ‘laborious, guilt ridden and narcissistic, reactive and turned towards melancholy’ as well as those that entertain positive ‘celebration’ only on the basis of a ‘wake’ (221). In his text, Derrida echoes Lyotard’s worry in *The Differend* that it is as if ‘Israel had wished to go through mourning’ in the sense of ‘establishing damages that can be repaired’ or ‘thinking that it can translate the wrong into damages and the differend into a litigation, which is and remains impossible’ (237). In and of itself, this concern is perhaps enough to counter Rancière’s dismissal of Lyotard’s writings as sponsoring ethical consensus founded on an endless work of mourning and commemoration. Instead, Derrida pays tribute to a sort of impossible mourning beyond mourning which does not readily partake of the forms of political limitation that Rancière associates with ‘ethical’ mourning *per se*.

Derrida, then, links the ‘quasi-grammaticality’ of the phrase ‘there shall be no mourning’ to dissymmetrical forms of address that remain resistant to the forms of consensuality or commonality implied by a ‘we’ or an ‘us’ or indeed by any stable identity and self-identical expression of a ‘you’ or an ‘I’ upon which they may be founded. He seeks to honour this dissymmetry in the act of reading Lyotard, whereby terms like ‘we’, ‘us’, ‘you’, and ‘me’ (as well as *tu* and *vous*)¹⁸ are not to be dispensed with but reconfigured – always at something of a guess – by the prescriptive phrase set down by Lyotard himself.¹⁹ If the only possibility of a ‘we’ may now be a post-hoc or as it were posthumous ‘we’, once more this re-articulates the question of politics to that of an im-possible mourning beyond mourning (‘there shall be no mourning’) which disorganises all of the relations of intention and address²⁰ that provide in turn the neat differentiations of ‘you’ and ‘I’. Such dissymmetrical and disorganised interlocutory relations take place with a *politics* in view to the extent that, as Derrida notes, Lyotard

asked publicly, in full light, and practically, but with reference to mourning, the question of the Enlightenment or the question *about* the Enlightenment, namely – in that Kantian space he tilled, furrowed, and sowed anew – the question of rational language and of its destination in the public space, a destination that is always elusive in that it is not pre-determined such. (217)

Such would be a ‘new’ or an as yet – and perhaps indefinitely – ‘unrecognisable’ politics of the public sphere that in Lyotard’s ‘The Other’s Rights’ resonates powerfully with the evocation of the other-human/other-than-human which establishes the fragile yet potentially transformative possibility of civic life (as a life beyond itself, as it were). Indeed, the radically dissymmetrical conditions of the ‘posthumous’ to which Derrida alludes via the phrase ‘there shall be no mourning’ only intensify the fraught interlocutory situation of civil life that in fact foreshadows them. Importantly, as Derrida acknowledges towards the end of his essay for

Lyotard, the untotalisable identities at play in such an interloctionary situation – ‘you’, ‘I’, ‘we’, ‘us’ – do not simply hazard a sort of deconstruction tending towards oblivion or radical paralysis but instead run the risk of what Lyotard in *The Differend* terms the ‘last phrase’, the further phrase that is called for by the prescriptive one upon which we have so dwelt, as the very possibility of an obligated or tasked freedom.

¹ Jacques Rancière, *Aesthetics and Its Discontents*, trans. Steven Corcoran (Cambridge: Polity, 2012).

² Rancière makes such arguments, with varying degrees of nuance, across a number of his texts. They often centre on Lyotard, where critical intensity tends to heighten. Indeed, Rancière is clearly fond of reprising his critique of the Lyotardian sublime, finding subtle ways to reiterate acrimonious dissatisfaction. See, for instance, the Foreword to *The Politics of Aesthetics: The Distribution of the Sensible*, trans. Gabriel Rockhill (London and New York: Continuum, 2004), and those sections of the chapter on ‘Artistic Regimes and the Shortcomings of the Notion of Modernity’ in which the comments included in the Foreword are further worked out (see esp. 29). See also, for example, *Dissensus: On Politics and Aesthetics*, trans. Steven Corcoran (London and New York: Continuum, 2010), esp. 59–60, 72–4, 182. Here, across a series of different essays, Rancière’s rancor gathers itself through repetitive focus on Lyotard’s 1993 lecture for Amnesty International, ‘The Other’s Rights’.

³ To be more specific regarding Lyotard, in *Aesthetics and Its Discontents* Rancière argues that Lyotard contrasts the ‘positivistic nihilism of aesthetics as a discourse which, under the name of culture, delights in the ruined ideals of a civilization’ with the ‘negative task’ of bearing impossible witness to the ‘unpresentable’ (89).

⁴ Although Rancière argues otherwise, Lyotard of course knows this. For instance, in *Heidegger and ‘the jews’*, trans. Andreas Michel and Mark S. Roberts (Minneapolis: University of Minnesota Press, 1990) he writes: ‘Art is an artifact; it constructs its representation. At cannot be sublime; it can “make” sublime....’ (45). While there would be much to say on this basis about Rancière’s characterisation of Lyotard’s ‘mistaken’ thinking about the sublime, if nothing else it points to the former’s haste in wanting to present a reductive image of the Lyotardian project.

⁵ In *The Future of the Image*, Rancière describes the ‘ethical turn’ with which he is concerned in *Aesthetics and its Discontents* in terms of

a Platonic ethical framework that does not involve the notion of art, but where what is judged is simply *images*, where what is examined is simply their relationship to their origin (are they worthy of what they represent?) and their destination (what effects do they produce on those who receive them?).

See Rancière, *The Future of the Image*, trans. Gregory Elliott (London and New York: Verso, 2007), 111.

⁶ In the final essay included in *Aesthetics and Its Discontents*, ‘The Ethical Turn of Aesthetics and Politics’, Rancière argues that through his reading of the Kantian sublime Lyotard twists ethics into the very law of aesthetics whereas, in Kant, it opens a pathway out of the realm of art, so that in the process aesthetic freedom and Kantian moral autonomy are together overturned by and twisted into the (ethical) monster of art’s heteronomy, its subjection to the law of the ‘Other’. See esp. 127–8. In similar vein, in *The Future of the Image*, when discussing Lyotard, Rancière writes:

The problem of “sublime art” is thus posed in simple terms: one cannot have sublimity both in the form of the commandment prohibiting the image and in the form of an image witnessing

the prohibition. To resolve the problem, the sublime character of the commandment prohibiting the image must be identified with the principle of a non-representative art. But in order to do that, Kant's extra-artistic sublime has to be identified with a sublime that is defined within art. This is what Lyotard does when he identifies Kant's moral sublime with the poetic sublime analyzed by Burke. (132)

⁷ In the last chapter of *The Future of the Image*, Rancière argues that the paradox of Lyotard's sublime is that it seeks to disrupt the machinery of dialectical thought by drawing on the conceptual resources of its philosophical 'master': 'In short, the concept of art summoned to disrupt the Hegelian machine is none other than the Hegelian concept of the sublime' (133). Whether or not this is true, Rancière rereads Hegel to argue that, for the latter, the sublime does not simply entail a symbolic art that cannot find an adequate material form for its idea, and which is therefore prior to representation; more complexly, with the decline of representative art and the Romantic separation of form and content, the sublime makes possible 'a new symbolic moment' which is (at) the *end* of art, one that insists through a strongly polemical gesture on Hegel's part that after 'the dissolution of the determinate relationship between idea and material presentation' (136), as Rancière puts it, art is simply over, once and for all. For Rancière, Lyotard's disastrous move is therefore to reappropriate this 'end' in terms of an interminable (ethical) debt to the 'Other'.

⁸ Jean-François Lyotard, 'The Other's Rights', in *On Human Rights*, edited by Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 135–47.

⁹ Lyotard therefore continues: 'The likeness that they have in common follows from the difference of each from each' (136).

¹⁰ Jacques Rancière, *The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation*, trans. Kristin Ross (Stanford, CA: Stanford University Press, 1991). The premise of this book is that the scene of teaching is characterised by an equal intelligence shared by teacher and student alike and thus that the beginnings of education are to be found in such 'equality'.

¹¹ Fittingly, if ironically, the term is also used by Lyotard (even if its meaning is not identical with that of Rancière), for instance at the very close of *Peregrinations: Law, Form, Event* (New York: Columbia University Press, 1988), where Lyotard writes that 'the only consensus' we should concern ourselves with pursuing is 'one that would encourage ... heterogeneity or "dissensus"' (45).

¹² In order to mine the deeper history of the *differend*, Lyotard provides commentary on the Socratic preference to dispense with a third party in the dialogue between two philosophical opponents, and hence to eliminate the need for a judge (23). And yet, tellingly, the Socratic dialogue remains a three-way game since it continues to evoke and amass an audience.

¹³ The problem of giving the differend 'its due' is, however, complicated. For instance, to re-establish a referent on the basis of the differend, to regain a stake for the dispossessed in the 'game' of reality, would risk converting the differend into a mere litigation, thereby divesting the victim of a wrong; whereas if the differend continues to have no 'object' as such, it can simply be denied (28). Assuming the implications of the differend in full therefore requires more complex and differentiated operations within the universe of phrases.

¹⁴ The Nazis explicitly 'make laws without having to refer to anyone other than themselves' which is why there is no sacrificial element to the extermination (102). Indeed the incommensurability of idioms, Nazi and Jew, is compounded by the fact that there is not even the possibility of a tribunal (and thus damages) for the deportee, no differend to convert the wrong (106).

¹⁵ Jacques Derrida, *The Work of Mourning*, ed. Pascale-Anne Brault and Michael Naas (Chicago, IL and London: University of Chicago Press, 2001).

¹⁶ The text in question is a short piece by Lyotard entitled 'Translator's Notes' (Derrida concentrates on the section on 'Mourning') that was published in a 1990 special issue on Derrida of *Revue philosophique de la France et de l'étranger*, edited by Catherine Malabou.

¹⁷ As we will see, in *The Work of Mourning* Derrida writes that ‘death obligates’ in a form that is ‘unconditional’ to the extent that, in contrast, ‘one can always negotiate conditions with the living’. Death, however, ‘ruptures’ this ‘symmetry’ (223–24).

¹⁸ Derrida notes that, perhaps alone among their peers, he and Lyotard eschewed the ‘tu’ and instead retained the ‘vous’ as a therefore anomalous form of interchange, a ‘secret code’ with ‘transgressive value’, a practice of ‘exception’ or ‘contravention’, a ‘grammatical contraband’ that, as such, ‘left open its destinal singularity’ (226–28).

¹⁹ In the essay, Derrida gives reasons why he may speculate that the phrase, in fact, addresses him, though, of course, this falls well short of an assertion or proof.

²⁰ Not to mention the forms and borders of internality and externality that, post-mortem, introjection, and incorporation struggle to maintain or negotiate.