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**The Ethics of Heterogeneity:  
A Speculative Critique of Jean-François Lyotard's *The Differend***

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## Summary

The thesis is an attempt to develop a speculative (Hegelian) critique of the ethical and political questions raised by Jean-François Lyotard's book *The Differend*. I have argued that these questions are dependent upon the reading of Kant's three Critiques, and his political essays, which Lyotard develops in *The Differend's* four 'notices' on Kant, and that it is this reading which opens up his concept of difference ('heterogeneity') to the possibility of a speculative critique. Chapter one comprises an examination of Lyotard's attempt to establish speculative thinking's dependence upon a metaphysical idea of the self as the possibility of ethical sublation. I have argued that Lyotard's appropriation of Adorno's idea of "Auschwitz" as blocking dialectical sublation, fails to recognize the speculative significance of the concrete conditions which produced the historical emergence of Nazism. The following three chapters are concerned to develop the argument that Lyotard's misrepresentation of the spirituality of Hegel's philosophy, conditions his reading of the critical philosophy as disclosing the possibility of a spontaneous (ethical) judgement of difference. Chapter two argues that Lyotard's claim to show critical subjectivity to be a 'litigation' of self-conscious faculties, fails to recognize the actual lack of unity which characterizes Kant's 'transcendental unity of apperception'. The exclusion of 'otherness', which Lyotard claims is disclosed and suppressed in Kant's notion of cognitive experience, actually necessitates concrete self-recognition. In chapter three, Lyotard's attempt to abstract an ethical 'obligation without conditions' from Kant's critical morality is interrogated. I have argued that the aporias constituted through the spontaneity of practical reason, are reinforced through Lyotard's concept of 'ethical time'. The final chapter develops a speculative approach to the notions of ethics and politics which Lyotard abstracts from the *Third Critique*. I have argued that the notion of an 'unpredetermined' judgement which Lyotard articulates in the final sections of *The Differend*, constitutes a subjective 'culture' which is ultimately non-ethical and apolitical.

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## Abbreviations

In the text I have used the full titles of the works which I have cited, with the exception of Hegel's *Phenomenology of Mind*, which I have referred to simply as the *Phenomenology*.

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## Introduction

In his *Lyotard: Writing the Event*, Geoffrey Bennington remarks of Lyotard's publishing career that it is 'at first sight, more remarkable for its shifts and breaks than for any continuity'<sup>1</sup>. This initial impression, I would agree, is somewhat misleading; although, as I have argued, *The Differend* does mark a break from Lyotard's earlier writings for a number of important reasons. The continuities which Bennington in particular draws out between the 'primary process'<sup>2</sup> of the libido, and *The Differend's* transcriptions of heterogeneity and difference from Kant's critical philosophy, are significant because they disclose a transition from the energetical reductivism of *Libidinal Economy*, to a form of engagement with conceptual thinking. This transition is crucial. It constitutes a recognition of the necessity of critique, or a 'critical activity'<sup>3</sup> of thought, to the development of an ethical position. Thus, it is only through the terms established in *The Differend* that Lyotard's writing has a genuinely ethical and political significance: the texts which immediately precede its publication, *The Postmodern Condition* and *Au Juste* (translated as *Just Gaming*), prefigure the idea of the differend, while those which have followed have been specific articulations of it.<sup>4</sup> *The Differend* therefore, is not unrelated to Lyotard's earliest attempts to establish the uniqueness of the particular; yet it is only through the terms of its critique, that his writing is opened up to the possibility of a speculative exposition.

The transcription of Kant's critical philosophy which is set out in *The Differend*, I have argued, is an attempt to expound a critical activity of thought which is sensitive to the particularity of difference, that is, to the 'incommensurability'<sup>5</sup> of heterogeneous phrase regimes and genres of discourse. Lyotard's reading of the critical philosophy, attempts to show that the forms and categories of cognition, or representation, through which Kant expounds transcendental subjectivity, depend upon metaphysical ideas of reason to guarantee the unity of experience. His claim is that the practical and theoretical cognitions of the critical subject, are originally sensitive to the

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heterogeneity which they organize; and that Kant, in negotiating this exteriority, discloses thinking's immediate receptiveness to the 'unpresentable'.<sup>6</sup> It is the account of reflective judgement given in the *Third Critique*, which, on Lyotard's reading, establishes this receptiveness as both the condition and negation of legitimacy. The absence of determinate concepts in the reception of aesthetic and teleological finalities, is abstracted from the development of the *Third Critique*, and presented in *The Differend* as a spontaneous activity independent of the rules of generic discourses. Thus, the notion of judgement which is expounded in the *Third Critique*, is conceived by Lyotard as the point at which Kant's 'metaphysical' representation of the experience and autonomy of the subject, is displaced by a critical activity which pervades his account of transcendental faculties. For Lyotard, Kant's reflective judgement<sup>7</sup> is not a faculty, but the condition of discrete transcendental functions: it is the condition which Lyotard presents as opening up the possibility of non-metaphysical philosophy, politics and ethics.

*The Differend* attempts to develop a critique of 'foundationist'<sup>8</sup> philosophies, which expound the ethical and the political as moments determined through conceptual necessity. A genuinely critical philosophy, according to Lyotard, 'has as its rule to discover its rule: its *a priori* is what it has at stake ...':<sup>9</sup> nothing, in other words, ought to be presupposed by the philosopher in his or her reception of incommensurability which springs from discrete genres of discourse. Philosophies which attempt to deduce authority and obligation from conceptual necessity, suppress (*a priori*) the spontaneous judgement of difference which lies at the core of *The Differend's* ethical and political problematics. For Lyotard, it is to the unpredetermined judgement differends, 'the unstable state and instant of language wherein something which must be able to be put into phrases cannot yet be',<sup>10</sup> that thinking is responsible: each genre excludes an 'otherness' from its 'rules' of formation, and it is this otherness which must be constantly re-phrased. The ethical and the political are presented in *The Differend* as moments of spontaneous origination, in which thinking 'links onto', or judges, the event of the current phrase, without

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recourse to the categories of conceptual legitimation. In its ethical and political orientations therefore, the critical activity of thought ought to 'delegitimize'<sup>11</sup> the legal and institutional forms through which authority is established as right; it ought to judge the difference (differends) which is co-presented by heterogeneous discourses.

The basic argument of my thesis will show that Lyotard's conceptions of ethics and politics are founded upon misreadings of Kant's three *Critiques* (and his political essays); and that his concept of thinking's 'critical activity', reproduces the aporias and contradictions which characterize subjective idealism.

According to Lyotard's reading, Kant's critical philosophy discloses a tension between the 'unrepresentable' element which exists as other to the subject, and the activity of that subject in constituting the unity of itself and its representations. In his account of the *Critique of Pure Reason*, Lyotard attempts to show that this tension is disclosed in the relationship of the modes of intuition, space and time, to the matter of sensible affection. The temporal syntheses on which Kant's idea of phenomenal experience is dependent, is presented as presupposing a heterogeneity which the 'Transcendental Aesthetic' has not subsumed under the rules of cognition. In the *Second Critique*, the persistence of this unrepresentability is negotiated through the idea of the 'type', by which duty is enabled to present itself within a realm of congruent human ends. Lyotard's transcription of the *Third Critique*, with its concentration on the tension between the faculties of reason and imagination expounded in the 'Analytic of The Sublime', presents the notion of reflective judgement as an immediate sensitivity of thought to the otherness negotiated by Kant in the *First and Second Critiques*. The moments of conjunction on which Lyotard focuses in his transcriptions of practical and theoretical reason, are produced through a 'metaphysical' presupposition of 'reality'<sup>12</sup> as prior to the immediate reception of difference. What are understood in *The Differend* as the metaphysical elements of Kant's critical philosophy therefore, are

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presented as originally sensitive to the heterogeneity which they attempt to homogenize. It is this sensitivity which Lyotard presents as distinguishing the Kantian project from the totalizing metaphysics of Hegel's speculative philosophy.

Lyotard's reading of the critical philosophy presents an account of the exteriority of judgement to the otherness which is present in Kant's exposition of both practical and theoretical legislation. The lack of unity in the experience of the critical subject, in other words, is articulated in *The Differend's* 'notices' on Kant as culminating in a judgement (of the sublime) which is infinitely sensitive to the wrong and victimization (of the other) constituted through genres of discourse. It is this infinite (spontaneous) sensitivity which, I will argue, excludes the possibility of recognizing the ethical significance of difference; and which is the presupposition of the critique of speculative thought which Lyotard develops in the 'Result' section of *The Differend*. The first chapter therefore, shows that Lyotard's attempt to expound speculative philosophy as a set of abstract rules of 'formation and linkage'<sup>13</sup>, fails to recognize the critique of positing which is developed in Hegel's philosophy. The substance of my argument is that speculative phenomenology's account of the development of self-consciousness, grounds the necessity of mediation between subject and object in the historical contradictions of abstract understanding. Lyotard's conception of the self (*Selbst*) as a *Resultät* presupposed at the 'beginning' of the *Phenomenology*, misrepresents the historicity of this exposition: absolute self-recognition is consciousness' re-cognition of the finite historical 'elements' which continue to form and contradict its freedom. Thus, the evil of 'Auschwitz', which Lyotard presents as 'blocking' speculative discourse, must, I have argued, be conceived as a deeply contradictory 'culture'<sup>14</sup> of subjectivity, which destroys its own particular ethical life.

It is the failure of Lyotard's attempt to consign Hegel's speculative philosophy to the realm of metaphysics, that underpins my exposition of his reading of Kant's critical philosophy. the second chapter of my thesis is

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concerned to show that Lyotard's attempt to abstract an immediate presentation (of otherness) from Kant's 'Transcendental Aesthetic', and to expound the activity of the subject's *a priori* faculties as 'forgetting' (suppressing) that otherness in their 'litigations'<sup>15</sup>, posits an identity of self-consciousness with each of the subject's constitutive activities. The substance of my argument is that Lyotard's 'juridical' reading of the Kantian subject, abstracts the lack of unity determined by *a priori* faculties, from the historical conditions which produce and sustain their formal separation and difference. The critical subject's relation to contingency and difference, I have argued is not that of an *a priori* suppression: its synthetic activity is part of a speculative development in which the other is ethically mediated in each particular will.

The third section is concerned with Lyotard's idea of the possibility of obligation, and its relation to his reading of Kant's *Second Critique*. In the second of *The Differend's* 'notices' on Kant, Lyotard argues that the idea of duty suppresses the original freedom which Kant assumes as the formal condition of rational autonomy. 'Obligation without conditions', according to this account, cannot be conceived simply as the exclusion of heteronomous causality; the freedom of linkage onto the current phrase can only be sustained through the complete absence of representational conditions, including the idea of a 'congruent' realm of human ends. Thus the fundamental question arising from *The Differend's* presentation of critical morality, concerns how the power of spontaneous causality, which Kant attributes to the purely formal independence of the will, contributes to the development of consciousness towards self-recognition. The argument set out in chapter three shows that the forms of agency and passivity through which the moral will is expounded in the *Phenomenology*, constitute aporetic relations of concept and object, subjectivity and actuality, which can only be explicated speculatively. By extending the critiques of abstract self-legislation developed in the *Phenomenology* and *Philosophy of Right*<sup>16</sup> to *The Differend's* idea of obligation, I have argued that Lyotard's idea of spontaneous reception of differend is afflicted (*a fortiori*) by the same aporias as Kant's moral will. The formal possibility of freedom which

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Lyotard abstracts from Kant's exposition of moral necessity, conditions an idea of a 'presuppositionless' judgement which is incapable of giving ethical significance to the other.

The final chapter is concerned with Lyotard's attempt to abstract the idea of a spontaneous ('presuppositionless') judgement of difference (differends) from Kant's *Third Critique*. I have divided this final part of my argument into two distinct but related sections: 'Reflective Finality and the Logic of Subjective Judgement', which is concerned speculatively to expound the (objective) necessity immanent in Kant's 'reflective judgement'; and 'The Politics of The Sublime and the History of the Ethical', which develops a critique of the relationship of judgement and conceptual representation set out in *The Differend*. By abstracting the non-cognitive, undeterminable moment of aesthetic finality from the body of Kant's *Third Critique*, and attempting to establish its reception as the disclosure of a genuinely 'critical' judgement, Lyotard forecloses on the possibility of an ethical politics. The expositions of judgement set out in the *Science of Logic* and the *Encyclopaedia of the Philosophical Sciences*, and the place which this occupies in the development of the notion as such, I have argued, constitutes a profound critique of Kant's subjectivization of finality, and *a fortiori*, Lyotard's notions of politics and community.

The spontaneity of thought which *The Differend* presents as resistance to representation and community depends, I have argued, upon his transcription of the antinomy of conception and representation set out in the 'Analytic of The Sublime'. For it is here, according to *The Differend's* final 'notice', that the impossibility of 'passages' between different genres and phrase regimes is formulated within the terms of transcendental idealism. For Lyotard, the experience of incommensurability which Kant expounds as the (*a priori*) ground of sublime affection is the experience of the 'unrepresentable' as such: the antinomy of reason and imagination discloses thinking's political responsibility to the (ontological) experience of heterogeneity. I have argued that this

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subjectivizing account of Kant's aesthetic finality, fails to acknowledge the speculative necessity constituted in the idea of negative pleasure; and that the historico-political problematic which Lyotard abstracts from the 'Analytic of The Sublime', constitutes an aporetic opposition of the subject to the formative actuality (*Sittlichkeit*) in and through which it exists. The differentiation which Lyotard posits as absolutely heterogeneous and incommensurable, can only be truly expounded by self-consciousness' misrecognition of its (universal) work, desire and otherness.

The theme I have attempted to sustain throughout therefore, is Lyotard's misrepresentation of Kant's critical philosophy, and the consequences of this misreading for his ideas of politics, ethics and philosophy. My argument is that Lyotard's transcriptions of the three *Critiques*, and of the political essays, fundamentally misrepresent the lack of unity determined by the transcendental subject, and actually reinforce the ethical and political aporias constituted in the critical philosophy. The power of Hegel's speculative exposition of Kant, in other words, is that it does not abstractly privilege or exclude any one of his writings; and it is the necessity of this immanent critique which I have attempted to re-present through a critique of *The Differend's* ethical and political problematics.

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Introduction  
Notes

1. Bennington, *Lyotard: Writing the Event*, 1.
  2. See *Libidinal Economy*, 'The Great Ephemeral Skin'.
  3. *The Differend*, 135.
  4. See especially, *Heidegger and "the jews"*.
  5. *The Differend*, 167.
  6. See *Heidegger and "the jews"*, section 12.
  7. See Kant's *Critique of Judgement*.
  8. *Heidegger and "the jews"*, 26.
  9. *The Differend*, ¶98.
  10. *Ibid.*, ¶22.
  11. *Ibid.*, ¶208.
  12. *Ibid.*, ¶126.
  13. *Ibid.*, 91-97.
  14. See the *Phenomenology's* account of the 'terror' of the French Revolution, 599-610.
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15. *The Differend*, 64.

16. 'The Moral View of the World', *Phenomenology*, 615-627; and 'Morality', *Philosophy of Right*, 75-104.

## Chapter I

The Ethical Significance of *The Differend*

As I have explained in the general introduction to my thesis, the method of exposition I will employ in criticizing Jean-François Lyotard's book *The Differend*<sup>1</sup>, is to question his abstraction of 'heterogeneity' and 'incommensurability' from Kant's critical philosophy. My aim in this first chapter of the thesis however, is slightly different from, although essentially related to, this project. I will show that Lyotard's idea of the 'differend' is expounded in terms which make it fundamentally an ethical notion; and as such, it is a subjective form which must be conceived as a misrecognition of spirit's temporal life and activity. Counterposed to Lyotard's attempt to transcribe Adorno's conception of 'Auschwitz'<sup>2</sup> into his philosophy of phrasing, I will show that the *Phenomenology's* exposition of the French Revolution provides an account of ethical dissolution and spiritual deformation, through which it is necessary to think the Nazi holocaust. By showing that 'Auschwitz' cannot attest to the radical heterogeneity of discourses and the absolute dispersal of substantive subjectivity (the *Selbst*), I will establish the conditions upon which a speculative critique of Lyotard's reading of Kant can be made. It is on the basis of this rebuttal of *The Differend's* critique of Hegel, that I will expound the ethical significance of the ideas of 'presentation', 'obligation', 'politics' and 'judgement' which Lyotard develops from his reading of Kant's critical philosophy.

*The Differend* is an attempt to establish the immediacy of 'the phrase' as the basis of ethical necessity. Lyotard's claim is that thinking's relation to every established form of knowing, what he terms 'genres of discourse', is one of ontological heterogeneity: each 'linkage' onto the 'current phrase' is responsible to the 'nothingness' which opens up through the phrase's immediate configuration of the link. Lyotard's idea of the differend therefore, is from the beginning expounded as an ethical notion: the entire development of his treatise is concerned to disclose the principle of domination inherent in any

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attempt to homogenize the 'otherness' of experience and the originating spontaneity of the phrase.

In his preface to *The Differend*, Lyotard specifies the central idea of his work

a case of conflict, between (at least) two parties, that cannot be equitably resolved for lack of a rule applicable to both arguments ... However, applying a single rule of judgement to both in order to settle their differend as though it were a litigation would wrong (at least) one of them (and both if neither side admits the rule) ... A wrong results from the fact that the rules of the genre of discourse by which one judges are not those of a judged genre or genres of discourse. [*The Differend*, preface xi]

Differends occur among the phrase regimes and genres of discourse which compete to appropriate the 'event' for their rules of formation. For Lyotard, it is this immediate disclosure of the absence of a universal rule of judgement, which discloses thinking's spontaneous origination in and through the phrasing of the event. 'Linkage' onto the present phrase can never be absolutely determined; and it is the subsumption of the occurrence under 'incommensurable' finalities, which constitutes the wrong perpetrated by self-legitimizing discourses (genres).

Differends therefore, signify the heterogeneity and contingency of phrasing; their existence is absolutely contemporary with the phrase's undetermined linkage onto the present. This spontaneous origination, which Lyotard articulates through his idea of the phrase, is inseparable from the ethical notions of wrong and victimization. Any genre which imposes its determination of 'truth' on the contingency of linkage, necessarily excludes the language of legitimation belonging to any other discourse. The victim of a wrong has no way of expressing the injustice which is done to him or her; as the rules of the phrase or genre with which he or she expresses his or her difference, cannot 'signify' that wrong,

A case of differend takes place between two parties when the 'regulation' of conflict that opposes them is done in the idiom of one of the parties, while the wrong suffered by the other is not signified in that idiom. [*The Differend*, ¶12]

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The heterogeneity of phrase regimes, according to Lyotard, is determined by different dispositions of addressor (agent/sender), addressee (patient/receiver), sense (meaning), and referent (object). Each phrase situates thinking within the immediate form of its spontaneity: the actuality of the other, or 'addressee', the object, or 'referent', whose sense the addressor determines, and the situation in which each of these elements is related, constitute the irreducible contingency of each event<sup>3</sup>. Differends are the inevitable consequence of phrasing; for the immediate heterogeneity of the 'current phrase' is always already what is at stake for the genres of discourse and phrase regimes which must link onto the occurrence,

Genres of discourse do nothing more than shift the differend from the level of regimen to that of ends. - But because several linkages are possible does that necessarily imply that there is a differend between them? Yes it does, because only one of them can happen at a time. [*The Differend*, ¶40]

For Lyotard there is an ethical necessity to remain sensitive to the ontological necessity of differends among phrase regimes and genres of discourse. Each has its own 'protocol' for establishing the significance of the event onto which it links; and it is only by respecting the rules of these as irreducible to a general principle of evaluation, that wrong and victimization can be phrased without prejudgement or 'forgetting'<sup>4</sup>. 'That is why it is important to distinguish between phrase régimes, and this comes down to limiting the competence of a given tribunal to a given phrase'.<sup>5</sup>

It is the competing 'finalities' of generic discourse which determine victimization and wrong; for it is through these discourses that the contingency of phrasing can become suppressed. This concern for the spontaneity of linkage onto the event, is what informs Lyotard's conception of speculative thought as the imposition of 'metaphysical' ideas of mediation and identity upon heterogeneous phrase regimen. The development of consciousness which Hegel sets out in the *Phenomenology*, is presented in *The Differend* as the activity of a universal 'self' (*Selbst*) which 'totalizes' the heterogeneous phrases through which it develops. Speculative dialectics are for Lyotard determined by the rule

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of the *Resultät*, whose demand 'Engender every phrase as the expressed identity of the preceding ones, including the present phrase',<sup>6</sup> suppresses thinking's capacity for the phrasing of differends. What is, in other words, has its 'being' through the spontaneity of phrasing; the universe expands 'idiomatically' through the expression of torts and differends.

'Auschwitz' is the name within this universe of contingent phrasings, which finally discloses the heterogeneity of thought as an ethical necessity. The racial mythology of Nazism determines the genocide as an imperative through the absolute heterogeneity of 'law' and 'obligation'. The command of the SS member to the Jewish deportee, 'That you die; that is my law',<sup>7</sup> requires nothing of the latter other than his or her annihilation. There is no possibility of a community of victims at 'Auschwitz'. Each deportee is completely abstracted from the substance of his or her civil and religious life, and made completely subject to the law of the 'Aryan' mythology. For Lyotard, the wrong perpetuated in the death camps cannot be phrased in a positive recognition of a universal 'We'. This wrong is absolutely destructive of the concept of humanity; its demand is that thought phrase the victimization of the 'otherness' which is excluded by grand narratives and generic discourse,

In the differend, something 'asks' to be put into phrases, and suffers from the wrong of not being able to be put into phrases right away...they [human beings] are summoned by language...to recognize that what remains to be phrased exceeds what they can presently phrase, and that they must be allowed to institute idioms which do not yet exist. [*The Differend*, ¶23]

The conception of speculative thought which Lyotard presents as 'blocked' by the name of 'Auschwitz' however, is based upon a fundamental misrepresentation of speculative phenomenology. The transitions expounded by Hegel in the *Science of Logic* and the *Phenomenology of Mind*, are concretely historical; they do not, as Lyotard contends, 'presuppose' the operation of a 'result' posited outside the body of the text. It is this failure to recognize that the speculative method is not a process of abstract 'totalization', which determines Lyotard's understanding of 'Auschwitz' as the end of ethical life.

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Lyotard's 'critique' of speculative thought is determined by his understanding of the relationship of between 'naming' and identity. The name, on Lyotard's conception, is a 'rigid designator', which determines a fixed identity which is independent of addressors, addressees and deictic signification of particular phrases.

Networks of quasi-deictics formed by names of 'objects' and by names of relations designate 'givens' and the relations given between those givens, that is to say a world. I call it a world because each of those names, being 'rigid'... is inadequate of the phrase universes that refer to it, and in particular those addressees presented in those universes. [*The Differend*, 60]

It is the very 'emptiness' of the name which is its identity. A nominative can appear in any number of sentences, each of which gives it a new signification, or even supplants it with new names, without ceasing to be 'this' particular name: 'Cognition can lead one to abandon a name, to replace it by others, to admit or create new names'.<sup>8</sup>

Names therefore, are not essences, or metaphysical determinations of identity. Their rigidity is constituted in the 'fact' that sentences are unable to determine a definite object, or 'referent', without the nominative assertion of identity between 'descriptive' and deictic (indicative) phrases. The fixed identity of the name must be understood as a necessary part of the process of 'cognition': without the 'trans-sentence' identity of the proper name, descriptives and deictics would have only a private, accidental significance. They would not be intersubjectively established 'cognitions' of a specific referent.

Naming is thus an irreducible moment in the phrase's designation of 'reality'; a moment which, in the spontaneity of the phrase event, may or may not be emphasized, but which is necessarily present,

Reality: a swarm of senses lights upon a field pinpointed by a world. It is able to be signified, to be shown, and to be named...

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The emphasis is sometimes put as one of these, sometimes as another. [*The Differend*, 82]

Lyotard's engagement with the speculative thought, is thus an attempt to show that the *Phenomenology's* exposition of consciousness' 'development', is possible only through a conception of identity which is ultimately 'metaphysical'. Speculative discourse, according to Lyotard's transcription of its method, begins with the assumption a universal concept of the 'human self' or *Selbst*, which predetermines the development of natural consciousness towards absolute recognition. The necessity of absolute knowledge established at the conclusion of the *Phenomenology*, is understood as constituting the necessity of a subject whose actuality develops through the reconciliation of different phrase regimens. For Lyotard speculative thought takes the *Selbst* to be implicitly identical with the moments of addressee, sense and referent which it 'addresses': it is only through the presupposition of this universal subjectivity that heterogeneous phrases can be expounded as a necessary development,

[Speculative thought] claims merely to liberate the *Selbst's* infinite movement of alteration, which is potential in the universe of the slightest phrase on account of its being dispersed into several instances. [*The Differend*, 93]

This reading of Hegel reduces speculative philosophy to a generic discourse, which pre-establishes 'rules' determining the development of the *Selbst* through its various contents. Every speculative proposition has presupposed the activity of the *Selbst*, not only in the formulation of contradictions (Lyotard's rule of immanent derivation), but also in the selection of 'equivocal' phrases which will allow the totalizations through which Absolute Knowledge is 'engendered.' On Lyotard's transcription, it is only by maintaining the integrity of these rules, that speculative thought is able to present the development of self-consciousness as an historical necessity: 'The passage is only expressed with its terms past'.<sup>9</sup>

Lyotard presents speculative thought as a form of generic 'finality'. He argues that even if the *Phenomenology's* 'goal' of Absolute Knowledge is itself a speculative determination, it is still an 'end' towards which spirit's historical

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development has 'progressed'; 'a dialecticized goal is still just as much a goal. The teleology has merely been sophisticated'.<sup>10</sup> The development described by Hegel in the *Phenomenology* is the imposition of a 'metaphysical' ideas on the phrases' determination of 'reality'. The 'addressor' of speculative discourse, in other words, is the *Selbst* which 'engenders' its development from the rule of the '*Resultat*'. For Lyotard this 'protocol' of universal totalization, simply privileges the metaphysical identity of the *Selbst* over the rigid designation of the name. Speculative thought destroys the 'trans-sentence' identity of the nominative phrase, and converts this destruction into a series of historical 'gains',

Speculation is a machine that gains, and it is therefore a deranged machine. The 'thing' only works by transmitting its losses including names and pronouns- into gains. [*The Differend*, 96]

Thus, the 'speculative genre', which Lyotard presents as selectively admitting, redetermining, and totalizing phrase regimens, is distinguished from 'philosophy', which is related to 'the present' through heterogeneous 'presentation, presenteds and events'.<sup>11</sup> The operation of the *Resultät* assumes the being of a universal self (*Selbst*), which is independent of all particular names. For Lyotard speculative thought's 'metaphysical' designation of identity therefore, predetermines judgment of every 'presentation'. It cannot express the infinite spontaneity and contingency of linkage (onto the 'current phrase'), precisely because it cannot engender the necessity of its own 'protocol',

The stakes of a philosophical discourse are in a rule (or rules) which remains to be sought, and to which the discourse cannot be made to conform before the rule has been found. The links from phrase to phrase are not ruled by a rule but are the quest for a rule. [*The Differend*, 97]

This conception of speculative thought as producing 'gains' from destruction however, is sustainable only where it is 'presentations, presenteds, and events' which are taken as indubitable. In determining the possibility of the phrase's immediate presentation of 'the real', Lyotard presents the name as 'rigidly designating' identity. It is only through this postulation of the name as the complete absence of determination, that he is able to claim that the rule of the

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*Resultat* engenders the *Selbst* through the destruction of concrete identities. What is actually gained in the historical development of self-consciousness cannot be conceived in Lyotard's notion of absolute relativity as the condition of thinking. Speculative phenomenology, in other words, is the substantiation of a 'content' (self-consciousness) which appears through the concrete necessity of its elements. What is produced in historical time are 're-cognitions' of consciousness' own actuality,

if [spirit] must be presented to itself as an object, but at the same time straightaway annul and transcend this objective form; it must be its own object in which it finds itself reflected.  
[*Phenomenology*, 86]<sup>12</sup>

The necessity of consciousness' movement towards absolute self-recognition therefore, is determined by misrecognitions of its own actuality. The forms through which consciousness' work, desire, and enjoyment appear to it, are the conditions of its being and activity; conditions which determine the necessity of universal recognition independently of any predetermined 'rule'. Hegel's account of the development of 'finite spirit' explicates a necessity which is concrete with the actuality of consciousness. The forms through which it develops do not appear in speculative phenomenology simply because they are 'totalizable' ('equivocal'); they are necessary determinations of conscious subjectivity, and its movement towards self-recognition,

... in the case of conceptual thinking... the negative aspect falls within the content itself, as well as being its inherent character and moving principle as by being the entirety of what these are.'  
[*Phenomenology*, preface, 118]

Hegel's idea of Absolute Knowledge is not the 'dialecticized goal' which Lyotard claims is the precondition of a speculative phenomenology. The development which is actually described in the *Phenomenology of Mind*, is concrete with consciousness' misrecognition of its real determinations. The 'history' of finite spirit is the history of abstract forms through which consciousness represents the content of its being and independence. Each of these forms is itself an objective determination of 'natural' consciousness, which produces contradictions independently of Spirit's universal self-recognition. Lyotard's presentation of speculative thought as a process of abstract summing

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which presupposes the idea of a 'universal self' (*Selbst*) fails to recognize the significance of Hegel's exposition. The idea of a universal 'self' (*Selbst*) does not determine and 'effectuate' the transitions described in the *Phenomenology*: this idea is a *Resultat* only in the sense of its determination of necessity after the elapsing of historical time. Absolute Knowledge is never 'at stake' for consciousness until the *Phenomenology's* final transition from Revealed Religion.

Lyotard's claim that 'the beginning can appear as this final result [Absolute Knowledge] only because the rule of the *Resultat* has been presupposed from the beginning',<sup>13</sup> fails to recognize the necessity of the *Phenomenology* as spiritual. The moments through which consciousness develops are not determined in their historical appearance by the abstract 'rule' of 'totalization'. Each 'objective' form described in the *Phenomenology* is an articulation of the conditions through which consciousness is actualized; speculative phenomenology presents, from the very beginning, the substantiation of abstract misrecognition.

Hegel 'begins' the *Phenomenology of Mind* with an exposition of the speculative necessity involved in consciousness' most abstract form of knowing: the immediate relation of the particular 'I' to the particular 'this'. The 'here' and the 'now', or the spatial and temporal forms through which the object is presented to the 'I', cannot be articulated simply as determinations of particularity. When the particular 'I' attempts to communicate 'when' and 'where' a particular object 'is', the immediate intuition of the latter's self-existence becomes impossible to specify. Consciousness cannot determine the presence of the object to itself without the mediation of universals that specify which 'here' and which 'now' is intended.

The 'I' of this 'sense certain' consciousness has the same structure as the 'here' and the 'now': it is the universal ground of all claims about particular objects made by particular individuals. The content of experience therefore, is

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such that it is always intersubjective, involving the universal determinations through which the certainty of external objects is mediated,

[Sense certainty] discovers by experience that its essential nature lies neither in the object nor in the eye; and that the immediate existence peculiar to it is neither immediately one nor the other. [*Phenomenology*, 154-5]

Even the apparent insubstantiability of what the 'I' experiences 'here' and 'now' cannot be determined without reference to universals. It is only by locating the punctual instant relation to other temporal 'points', that actual determination of immediate experience can be grasped.

Thus, the determinations upon which knowledge as sense-certainty seeks to establish itself, the abstract immediacy of the 'here', the 'now' and the 'I', cannot be substantiated with the implicitly speculative structure of articulation and communication. Universality becomes present to this sense certain consciousness as a real determination of its experience; although its (the universal's) actual constitution of subjectivity and objectivity is as yet unrecognized.

The transition from 'sense certainty' to 'perception' which Hegel expounds at the 'beginning' of the *Phenomenology* depends only upon the aporetic structure of immediate experience. Consciousness' transition from this most abstract form of knowing, is produced by the actual necessity of the universals (space and time) to the concept of 'sense immediacy'. Thus, the dialectics of 'Perception' and 'Force and The Understanding', proceed from an original determination of experience as non-immediately constituted. 'Consciousness' development through these atomistic moments requires no 'totalizing' concept of the 'Self' (*Selbst*); the movement towards the intersubjective determinations of 'Self-consciousness' is produced from the speculative necessity inherent in immediate presentation as such. The 'gains' which consciousness makes throughout its historical development are 're-cognitions' of its own actuality; nothing appears in this phenomenological movement which is not a necessary, although abstract, determination of its (free) subjectivity.

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Lyotard's reading of the idea of speculative phenomenology therefore, is a fundamental misrepresentation of Hegel's project. The transitions laid out in the *Phenomenology*, are not 'effectuated' though a universal concept of the 'Self'; each is an historical moment of self-consciousness which produces contradiction and transition from its own concrete necessity. The 'result' of Hegel's speculative exposition cannot be understood as 'presupposed' independently of its development; Absolute Knowledge appears at the end of the *Phenomenology* because the historical development of consciousness has necessitated it. The 'result' of the *Phenomenology* is not a 'goal', as nowhere in the text does it appear to natural consciousness as such. Lyotard's conception of speculative thought as a 'generic discourse' which suppresses the heterogeneity of phrase regimen, fails to recognize the 'actuality' of the determinations through which consciousness develops. For him, the 'rules' of speculation followed in the *Phenomenology*, determine nothing more than an infinite necessity for 'new' sublations.<sup>14</sup> It is only on this understanding of the development of finite spirit, that the possibility of an utterly non-dialectical moment is disclosed.

It is this misrecognition of the historical nature of speculative thought which informs Lyotard's conception of 'Auschwitz' as the end of ethical life. His attempt to show that the transitions expounded in the *Phenomenology* presuppose the operation of determinate 'results', leads to a fundamental misunderstanding of the relationship of spirit to its finite forms. *The Phenomenology*, by showing how consciousness develops through abstract moments of misrecognition, discloses spirits 'absolute knowing' as the non-positive relationship of consciousness to itself. Every form through which consciousness has passed in its movement towards self-recognition, is retained as a necessary determination of its absolute negative activity. Lyotard's demand that speculative thinking must be able to 'name' the moment of ethical sublation which results from the event of 'Auschwitz', fails to recognize the significance of the *Phenomenology's* historical exposition. For once absolute

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knowledge has been determined as the necessary end of consciousness' temporal development, there can be no possibility of spirit encountering substantively 'new' contradictions. 'Auschwitz' therefore, must be conceived as part of empirical history's reproduction of a particular contradictory moment in spirits' development. A moment which, objectively, cannot sustain itself as ethical life, and which ultimately determines its own destruction.

Lyotard's transcription of Adorno's idea of Auschwitz as a 'model' which is 'excepted' from the possibility of speculative totalization, attempts to show that phrase regimens are always absolutely heterogeneous, and that this heterogeneity presents the infinite possibility of victimization and wrong. The obligation of thought to phrase constantly the differends through which wrong appears therefore, is presented as the fact of an historical occurrence in which the determinations of 'prescription' and 'legislation' are irreducibly heterogeneous. The Nazi discourse of original racial superiority is understood by Lyotard as determining an imperative which can engender no positive ethical sublation, and which discloses the heterogeneity of law and obligation through the 'model' of absolute victimization.

Speculative phenomenology, on Lyotard's understanding, requires that all heterogeneity should be totalizable. Each 'phrase' must be recognized as constituting part of a determinate contradiction, which negates the ethical substance of its particular discourse. By failing to mediate adequately the phrases through which it is actualized therefore, each discourse produces its concrete moment of sublation, or the transition to a higher form of recognition: The speculative rule of the *Resultät* is formulated, 'Engender every phrase as the expressed identity of the proceeding ones'.<sup>15</sup>

The phrases of law and obligation which are determined by the racial mythology of Nazism, cannot, on Lyotard's reading, contribute to the development of ethical recognition. The discourse of an original superiority of the 'Aryan', constitutes the complete exception of the Jewish race from the

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matter of humanity. The obligation to which the deportee is subject is simply to die; for the law of the SS requires no more of him or her than that he or she should no longer exist,

That which orders death [the SS] is excepted from obligation, and that which undergoes obligation [the deportee] is excepted from the legitimation. The authority of the SS comes out of a we from which the deportee is excepted once and for all. [*The Differend*, ¶157]

The event of 'Auschwitz' is determined through a discourse which cannot be sublated in the development of a universal self (*Selbst*). The forms of law and obligation which determine the genocide, appear as absolutely heterogeneous elements which can engender no determinate contradiction, or more adequate self-recognition. The movement of speculative thought is 'blocked' at 'Auschwitz'.<sup>16</sup>

The name 'Auschwitz', is presented in *The Differend* as that 'within which speculative thought could not take place... a name not sublatale into a concept'.<sup>17</sup> The law of 'Aryan' destiny, in other words, is presented as an hermetic determination which cannot be conceived as a sublatale recognition of the *Selbst*. Thus, for Lyotard, the persistence of the speculative method 'after Auschwitz', constitutes an infinite scepticism which consumes and expels every determination on which it alights: 'It is necessary, 'after Auschwitz', for thought to consume its determinations ... with no result'.<sup>18</sup>

Thinking 'after Auschwitz', can no longer seek to determine the substance of a universal self in the forms or 'phrases', which constitute the 'being' of the community. Each phrase ought to be treated as a discrete and contingent occurrence, which determines the relation of thinking to the 'immediate' as a moment of pure spontaneity: 'The necessity of their being a phrase is not logical (the question of 'How?') but ontological (the question of 'What')'.<sup>19</sup> The ethical necessity which Lyotard is trying to establish the event of 'Auschwitz' therefore, is a respect for the contingency and uniqueness of thought's relation ('linkage') to the present; a respect which he attempts to determine through the notion of

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the differend. 'After Auschwitz', the heterogeneity of 'presentation' ought to be recognized as a 'regulative idea' opposed to the homogenization of generic discourses.

*The Differend's* exposition of the Nazi mythology presents an imperative which can engender no concrete moment of sublation, and which discloses the absolute contingency of the event (of linkage) through the fact of absolute victimization. The spontaneity of thinking's relation to the 'current phrase' therefore, is demonstrated by the historical obligation to express the 'inexpressible' wrong carried out by the SS in the death camps,

The differend is an unstable state and instant of language wherein something which must be able to be put into phrases cannot yet be. This state includes silence, which is a negative phrase but it also calls upon phrases which are in principle possible. [*The Differend*, ¶22]

Every presentation, in other words, as a point of contingent linkage, cannot be subjected to the end of generic discourse without the constitution of wrong. With the event of 'Auschwitz', thought discovers a wrong, the necessity of whose expression exceeds any possibility of speculative sublation. Thus, what remains 'after' the death camps, is the need constantly to initiate new (literary, artistic, philosophical) phrasings of the inexpressible evil which has foreclosed upon the possibility of speculative thought.<sup>20</sup> Within the structure of *The Differend*, 'Auschwitz' is presented as the point where the identity of obligation and legislation, of finite and substantive will, is permanently disclosed. It is conceived by Lyotard as an historical event which ought, under the rules which he attributes to speculative philosophy, to produce a mediating 'result'. The impossibility of such a production is what, on this reading, reduces speculative thinking to an infinite scepticism which cannot re-engender the experience of satisfaction in self-conscious subjectivity. For Lyotard, the 'negative dialectics' which Adorno expounds as the 'self-reflection'<sup>21</sup> of speculative thought 'after Auschwitz', is the projection of Hegel's sceptical mind into the bad infinity of negative critique. Nothing determinate can afford satisfaction to thought; everything is consumed without expectation of a production which is not simply

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'waste, shit'.<sup>22</sup> This argument fails to recognize the historical significance of the *Phenomenology's* exposition of scepticism.

Hegel's account of the sceptical consciousness demonstrates the aporetic nature of thinking which constantly returns to itself as negative essence. This self-consciousness cannot sustain any concrete distinction between itself as the universal condition of representations, and the contingent forms which are its transient contents. Lyotard's reduction of ethical thought to the undetermined reception and spontaneous phrasing of heterogeneity, remains within the aporetic moment of scepticism. For by asserting the absolute indubitability of the phrase's 'presentation', he presupposes 'thinking' as an activity originally divorced from the substance of subjectivity.

The *Phenomenology's* exposition of scepticism, shows that the impossibility of determining the 'truth' of relativity is lost in the positing of that relativity as absolute. *The Differend* however, presents the indubitability of the phrase as its simple, irreducible occupation of present time: even 'presentation' is in this sense identical. The necessity of presentation and phrasing is a contradictory conception of thinking. Nothing which is 'thought', not even the necessity of differends, recognizable as concrete; there is only the indubitability of presentation,

The condition of the encounter [of genres and phrase regimen] is not this [communicative] universe, but the phrase in which you present it. It is a transcendental and not an empirical condition.  
[*The Differend*, ¶39]

By maintaining that it is only the contingency of linkage onto the current phrase which is ethically necessary, Lyotard is left with no substantive concept of difference. The heterogeneity of phrase regimen and genres of discourse, can appear as 'incommensurable' only when conceived 'linkages' and 'finalities' are constituted in immediate abstraction from the substantive elements of ethical life. It is by placing the 'mythological origination' of the holocaust outside of these elements, that Lyotard is able to posit 'Auschwitz' as the dissolution of

speculative thought in negative dialectics.<sup>23</sup>

The sceptical consciousness is a phenomenological moment. Its conviction of the absolute contingency of appearance concretely determines the unhappy consciousness' attempt to find certitude in an external 'unchangeable' being. The essence of scepticism is its positing of life, existence and activity as arbitrary determinations external to its negative self-certainty. The truth of this separation however, is that the moment of absolute doubt is never more than an abstract self-determination which is always forced back into commerce with what it has taken to be utterly unessential i.e. the multiplicity of actual social relations in which it is implicated and upon which it depends. This consciousness, is the moment through which Hegel develops the contradiction between what self-consciousness takes to be 'essential' (the unchangeable), and the actual determinations through which its freedom is to become substantial for it.

Lyotard's conception of the relationship between thinking and immediacy therefore, leaves self-consciousness in a state of indeterminacy identical to the 'fickleness and instability' of the sceptical mind. The concrete determinations of its life and activity, appear to it simply as moments external to its spontaneous reception and judgement of difference. This state of indeterminacy however, cannot be formed as an ethical necessity; its historical production is the 'unhappy consciousness' which has recognized itself as an 'internally contradictory being' devoid of actuality and independence. The profoundly disturbed and perverted form of self-consciousness which Hegel presents as the consequence of scepticism, demonstrates the necessity of objective mediation of subjectivity. The possibility of the ethical, is shown to depend upon the consciousness recognizing itself in the actual work, desires and satisfactions which constitute its life.

The spontaneous activity of 'linkage' which Lyotard attempts to determine as the inescapable condition of the ethical, does not reduce speculative thinking to

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a negative scepticism which destroys every concrete form it produces. The moment of universal doubt produces a form of self-consciousness which can determine nothing substantive through its activity. Pure negation, in other words, results in absolute incertitude. It is this recognition which constitutes the unhappy consciousness as inalienably related to a fixed and unchangeable being in which it attempts to ground the whole of its life and activity. This relationship however, merely serves to deepen and intensify the unhappiness of self-consciousness, as it can relate to the real determinations of its existence (work, enjoyment, and desire) only as external to and deforming of, the purity of its devotion. Thus, self-consciousness knows itself as a pure contingency which is incapable of recognizing its own independent activity, or that of the other.

By thinking the unchangeable in this way, self-consciousness is constantly reduced to mere feeling and intuition. The whole of its activity in the world becomes degraded to nothingness; as the substance for which it yearns can give no concrete meaning to its life and activity. The unhappy consciousness, is the splitting of being and activity, the 'in-itself' and the 'for-itself', into two opposing and unmediated forms. It knows its own desire, work and enjoyment only as gifts from the 'in-itself' (the 'unchangeable' being of an unfathomable deity), for which it must give thanks. The whole of the activity of this dualistic self-consciousness, is self-denial and self-abasement; it is the constant reduction of its actuality to nothingness,

... the individual consciousness... denies itself the satisfaction of being conscious of its independence, and refers the essential substance of its action to the beyond and not to itself.[*Phenomenology*, 261]

Thus, deprived of its actual significance, the transformative activity through which self-consciousness sustains itself as a living being, becomes a constant enactment of degradation and perversion. Its life becomes fixed upon its depravity.

The emergence of the unhappy consciousness from the indeterminacy of

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scepticism therefore, is the point at which Hegel attempts to demonstrate the necessity of natural consciousness' recognition of its actuality. Work, desire and enjoyment constitute the real determinations of a being whose 'life' is transformative activity. Where these determinations become alienated to the actuality of an unchangeable being, consciousness becomes subject to a spiritual deformity which is grounded in a lack of objective self-recognition. The absence of certitude which produced the unhappy consciousness, determines self-consciousness as a form whose individuality is dependent upon the actual mediations of ethical life,

For giving up one's will is only in one respect negative;... it is at the same time positive, positing and affirming the will as not a particular, but universal. [*Phenomenology*, 266]

As finite spirit, self-consciousness requires the objective mediations of ethical life in order to realize its independence.

The question that a speculative critique of Lyotard's thought must answer therefore, is how his understanding of 'Auschwitz' can be encompassed within the terms of speculative philosophy. For if Hegel's exposition of scepticism has demonstrated the impossibility of pure (negative) spontaneity as the condition of the ethical, and the dialectic of the unhappy consciousness has shown the necessity of the objective self-recognition to ethical life, then the event of 'Auschwitz' cannot be conceived as reducing speculative thought to a 'negative dialectics'. The discourse of Nazism, in other words, must involve a determinate contradiction 're-cognizable' as part of spirit's temporal development towards absolute knowledge. This contradiction is described by Hegel as a 'culture' of consciousness which destroys and perverts the 'lawless' ethical life which is its precondition.<sup>24</sup>

Historically, the alienation of the unhappy consciousness from its actuality (work, enjoyment, desire), is constituted through the objective forms of Roman property law, and the lawlessness and coercion of feudal ties. The latter determine social relations as violence and fragmentation; and it is against this

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background that consciousness attempts to 're-form' ethical life on principles which it abstractly determines. This intention to suppress the actual mediations of ethical life, constitutes a necessity in which the latter is perverted in its real effects. Self-consciousness, is re-formed as a subjective determination which reinforces the violence and lawlessness of social relations.

The dualistic subject whose spiritual deformity is expounded by Hegel in the dialectic of the unhappy consciousness, has become formed as a false reconciliation of subjectivity and ethical life. The substance of the latter is determined through its misrecognition by the former. This constitutes a completely 'false' reconciliation in which consciousness fails to recognize its formation of and by the lawlessness of its world. It is a reconciliation brought about by the pure culture of subjectivity.

The falsity of this 'pure' reconciliation, is expounded in the *Phenomenology's* sections on the practical determination of 'Reason': 'The Law of the Heart'; 'Pleasure and Necessity', and 'Virtue and the Way of the World'.<sup>25</sup> The determination of these forms presupposes an historical background in which property relations have not established a formal universality of recognition; and where, consequently, self-recognition and the recognition of others, is determined as pleasure and desire. These abstract individualities, experience 'life' only as consumption; while their 'virtuous' activity can only bring them into conflict with the 'course of the world' (the actuality of the ethical which is preserved in the rejection of desire, pleasure and action). The 'absolute' ethical life of the state can appear to self-consciousness only as an empirical, contingent hegemony of 'wealth', which each tries to enjoy as a particular self-seeking individuality.

'Pleasure and Necessity', 'The Law of the Heart', and 'Virtue and the Course of the World' are all perverted forms of self-consciousness where 'practical' intentions actually reinforce the 'lawless' satisfaction of desire and pleasure which constitutes the ethical life of the state. The relationship of these forms of

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subjectivity to the ethical substance which they presuppose, demonstrates the necessity of consciousness' recognition of itself in the actual determinations of its life.

*The Differend* presents subjectivity and actuality as forms constituted within the speculative 'genre'; forms which for Lyotard are dispersed throughout the infinite possibility of phrasing the occurrence. On this account, every regime constitutes a particular 'universe' in which the disposition of sense, referent, addressor, and addressee, immediately determines a relationship of discrete agency (the 'addressor') to a discrete patient (the 'addressee'). Each of these universes emerges into a play of competing regimes and discourses; each is 'linked onto' by a particular rationality which attempts to exclude the contingency of the event. The impossibility of speculative thought 'after Auschwitz' is supposedly constituted by the impossibility of engendering any mediating principle from the incommensurability of phrase regimes and generic discourses: the idea of a universal self (*Selbst*) is for Lyotard beyond the finite forms through which Hegel attempts to expound its necessity. It is 'metaphysical'.<sup>26</sup>

The account of 'Auschwitz' presented in *The Differend* is an attempt to demonstrate the absolute heterogeneity of phrase regimen. Lyotard's claim is that there is no possibility of deriving a 'nameable' moment of reconciliation from the phrases of legislation and obligation which are constituted in the Nazi discourse of 'Aryan' destiny. The 'universes' of obligation and legislation within which the SS and deportee are situated by the Nazi discourse, cannot, on this reading, produce a speculative 'result'. The hegemony of Nazism culminates in the event of the death camps, precisely because it is a self-perpetuating denial of the concept of a universally human self. By the mythologising of its racial particularity as the only sufficiently human being, the Nazi appeal to the 'Aryan' race as the agent of historical necessity, determines the impossibility of universal recognition. Speculative thinking cannot 'engender' a determinate moment of mediation from the forms of obligation and law which produce the

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event of 'Auschwitz'.

This 'heterogeneity' of law and obligation however, is not non-speculative, and does not disclose the Nazi discourse as an absolutely non-speculative moment. By demanding that speculative thought should be able to 'name' the moment of ethical sublation produced at 'Auschwitz', Lyotard fails to distinguish between the natural self-consciousness whose development is expounded in the body of the *Phenomenology*, and spirits' 'reflective' self-understanding which is reached at its conclusion. The forms through which absolute knowing comes into existence have already produced the contradictions which determine the history of consciousness; while the autonomy of spirit is a 're-cognition' of these forms as 'objects' essential to its negative activity,

Hence spirit necessarily appears in time, and it appears in time so long as it does not grasp its pure notion, i.e. as long as it does not annul time. Time is the pure self in external form... and not grasped and understood by the self, it is the notion apprehended only through intuition. [*Phenomenology*, 800]

The 'pre-modernity' of Nazism's racial discourse does not present an absolutely non-speculative moment. It must be understood as the reappearance of a contradictory type of self-consciousness, whose 'grandest forms' Hegel expounds in the *Phenomenology*, as the 'satisfied' and 'unsatisfied', that is, German and French, Enlightenments.

As the most violently contradictory 'culture' of subjectivity, the abstract materialism of the French Enlightenment, constitutes an absolute denial of ethical substantiality to the social relations which are its precondition: 'The universal will goes into itself, is subjectivized, and becomes individual will, to which the universal will and universal work stand opposed'.<sup>27</sup> This failure of self-consciousness to acknowledge the lawlessness of the property form which determines its activity, that is, the immediate power of wealth in the absence of bourgeois property rights, deepens and reinforces that lawlessness. The self-consciousness produced by the French Enlightenment therefore, is determined

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through an absolute opposition to the ethical relations which forms it: 'reformative' intentions cannot realize themselves as objective determinations, and constantly perverted by its own activity,

It follows from this, that it cannot arrive at a positive accomplishment of anything... in the way of actual reality, either in the form of laws and regulations of conscious freedom, or of deeds and works of active freedom. [*Phenomenology*, 603]

This self-consciousness is aware of itself as the object, or universal 'matter', of a freedom which is opposed to every finite determination of the ethical which it encounters. The absence of bourgeois property rights, means that nothing outside consciousness' affirmation of itself as the infinite being ('matter') of free will, can remain in place as a 'real' ethical form. The concrete differentiation of society, in other words, has become subject to the 'stubborn atomic singleness of absolutely free self'.<sup>28</sup> The absolute 'matter' of freedom which the revolutionary consciousness attempts to realize, is speculatively determined as 'pure abstraction', or characterless object of faith and superstition.

It is the French Enlightenment therefore, which produces the terror of absolute freedom. The ethical life of a state governed solely by the 'law' of wealth, is taken as a lawless irrationality which it has the vocation to destroy. Abstract materialism passes over into a violent instrumentalist idealism, which treats the actual mediations of individuality present in social relations, as completely subject to the law of its 'universal' freedom,

The sole and only work and deed accomplished by universal freedom is therefore death, a death which achieves nothing; for what is negated is the unfulfilled punctual entity of the absolutely free self.[*Phenomenology*, 605]

The truth of the French Enlightenments' attempt to displace the dominance of faith and superstition, is an absolute negation which can acknowledge nothing beyond the law of its own activity. The 'matter' which it constantly invokes as the substance of rational human association, is completely without characteristics, and produces a self-consciousness which is absolutely

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threatened by its own activity. Speculatively understood, the French Revolution constitutes an utter dislocation of self-consciousness from the substance of ethical life, and the appearance of 'free will' as the agent of meaningless annihilation. The lawlessness which self-consciousness sets out to 're-form', is merely reaffirmed; and the substance of ethical life more and more deeply disrupted by subjectivity's want of objective recognition.<sup>29</sup>

The claim developed in the 'Result' section of *The Differend*, is that this (Hegelian) tyranny of absolutely free will, invokes an activity of the subject (Selbst) which is originally contained within the genre of speculative discourse. Lyotard's argument is that the transition to the higher ethical form of morality, can only occur because the 'punctual self' which Hegel identifies as the source of (French) revolutionary terror understands itself as a universal law. On this reading, it is only because the relationship of each individual to the totality appears as a law which commands the realization of universal freedom, that the terror of the French Revolution can be conceived as a destructive (yet productive) 'culture' of self-consciousness. The discourse of Nazism, according to Lyotard's understanding therefore, excepts itself from the possibility of 'dialectical effectuation'; for the law which it announces simply commands the purification and hegemony of one particular race. The argument developed in the rest of the chapter, will show that Lyotard's attempt to distinguish radically the terror of 'absolute freedom' from the terror of racial destiny, fails to recognize the speculative necessity in Nazism's violent appropriation of the law for the good of the *Volk*.

In *Heidegger and 'the jews'*, Lyotard expounds the victimization of the Jewish people by the Nazis, as the moment at which 'Occidental' thought discloses the destructiveness of its relation to that which it cannot represent and control. The 'indeterminate otherness' which haunts representational thinking, that which is 'forgotten' and cannot be forgotten by it, is symbolized by the religious, racial, political, and social persecutions to which real Jews have been subjected historically. 'The jews' are all those elements which exist

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as irreducibly 'other' to the categories of formal and representational thinking. It is this constant undermining of the 'foundations' of its project, of its hope for irreversible progress, which makes the presence of 'the jews', as radical heterogeneity, intolerable to Western thought. Thus, the Nazi slaughter testifies to the 'unthinkable' which cannot be eradicated from representational thought, by attempting to liquidate utterly the name of the otherness which always afflicts it: 'the jews',

... the slaughter pretends to be without memory ... and through this testifies again to what it slaughters: that there is the unthinkable, time lost yet always there, a revelation that never reveals itself but remains there, a misery ... [*Heidegger and 'the jews'*, 23]

Lyotard's claim that the event of the death camps marks the end of speculative ethics, is founded upon a misrecognition of Nazism's relationship to the actual social relations which produce it. The essential determinations of Nazism, that is, the lawlessness of ethical life, the reformatory 'vocation' of subjectivity, and the belief in the mythology of the 'Aryan' race, produce a 'culture' of self-consciousness which results in the dissolution and ultimate destruction of the state. By taking 'Auschwitz' as Nazism's uniquely exceptive (destructive) relation to the other, Lyotard ignores the disintegrative impact which Nazism has upon the ethical substance of the state. The evil of the genocide, in other words, must be understood as part of an extreme and deeply contradictory 'culture' of self-consciousness, whose objective necessity is the destruction of its own particular ethical life.

In order to give an adequate account of the 'culture' of Nazism, it is necessary to determine the nature of the relationship that exists between the lawlessness of the Weimar Republic, and the ethical and political appeal of the discourse of National Socialism. The aim of the thesis is not to provide an empirical history of the social and economic conditions which determined the rise of Nazism; but merely to indicate how the complete collapse of the national economy, and the disintegration of a recognizably ethical social order, provide the historical conditions for a destructive 'culture' of self-consciousness.

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Hannah Arendt, in her treatment of the disintegration of traditional class structure in Weimar Germany, remarks that,

Democratic freedoms may be based upon the equality of all citizens before the law; yet they acquire their meaning and function organically only where the citizens belong to and are represented by groups or form a social and political hierarchy. The breakdown of the class system, the only social and political stratification of the European nation states, certainly was one of the most dramatic events in recent German history. [*The Origins of Totalitarianism*, 312]

Although Arendt's analysis of the relationship between the success of Nazism, and the breakdown of social and political stratification in the Weimar Republic, is not explicitly speculative, her conception of the nation-state as constituted through the mediation of particular, 'finite' determinations of work, desire, and satisfaction, does disclose a homology with the *Phenomenology's* exposition of the French Revolution. For Hegel, it is the absence of formal (bourgeois) property law, which produces self-consciousness' determination ('culture') to reform what it conceives as the arbitrariness of social relations. Arendt's idea of 'massification' of traditional class divisions invokes the concept of a lawless social existence as necessary to the emergence an success of Nazism. Equality before the law is understood in her analysis of "The Classless Society"<sup>30</sup> as possible only where there is an objective mediation of individuality through the social and political institutions of the nation-state. In the absence of this mediation - an absence manifestly present in Weimar Germany - the nation-state is reduced to an aggregation of dispossessed individuals ('the mass') who do not constitute part of its substance. For Arendt, where the law is utterly without concrete significance for the individual, the state has already lost the possibility of resisting millennial ideologies of reform. The analysis of Nazism developed in *The Origins of Totalitarianism*, is 'speculative' in the sense of its expounding the relationship between a fractured, 'lawless' community, and the emergence of a violently destructive 'culture' of consciousness.

With the emergence of uncontrollable inflation and catastrophic levels of



unemployment after the First World War, the Weimar Republic could not sustain the necessity of bourgeois rights and freedoms. The social relations in which the substance of these abstract freedoms is constituted were ruptured by the inability of the 'System of Needs' to provide for the material requirements of ethical life. The possibility of a universal recognition was excluded by the destruction of the state's material grounding in work and particular satisfactions. For without the reproduction of 'socially constituted needs', the relationship of individuality to the law of the state becomes that of an abstract activity to an external, 'lawless' coercion.

The existence of bourgeois rights and freedoms in Weimar Germany could not prevent the emergence of a form of abstract individuality which is fundamentally alienated from the ethical and political life by the state: 'This apolitical character of the nation-states' populations come to light only when the class system broke down and carried with it the whole fabric ... which bound the people to the body politic'.<sup>31</sup> It is the impossibility of maintaining the integrity of ethical life under conditions of absolute material deprivation, which informs Arendt's conception of the 'massification' of classes as the precondition of totalitarian movements.

This radical breakdown of the traditional duties and satisfactions of ethical life was the pre-condition of the 'culture' of Nazism. Individuals were no longer tied to the finite aims and duties of a particular class; they became atomized and isolated units, which were formally homogeneous in their want of ethical and political identity. This 'rabble of paupers' as Hegel refers to propertyless, sub-political individuals<sup>32</sup> were not amenable to the ethical and political demands of the state; they had no objective articulation with its authority. Thus it is through the 'massification' of the classes which constitute the substance of ethical life, that the possibility of the 'culture' of totalitarian politics is determined,

Totalitarian movements are mass organizations of atomized, isolated individuals. Compared with all other movements, their most conspicuous characteristic is their demand for total, unrestricted, uncontrollable and unalterable loyalty of the



individual member. [*Origins of Totalitarianism*, 323]

The 'absolute and unconditional' loyalty demanded by Nazism is to the historical destiny of the race. With the dissolution of the old class-based duties of ethical life, the millennial demand that the 'Aryan' race should reform the lawlessness of the Fatherland, became the animating principle, or 'culture', of self-consciousness. Blame for the disintegration of the nation-state, is attributed to the parasitism of Judaism on 'Aryan' society, and to the adulteration of racial purity by the Jewish race.

Nazism proceeds from the notion of an absolute material difference obtaining between the 'Aryan' and the 'Jew': it attempts to determine what distinguishes absolutely the Aryan 'culture creator' from the Jewish 'culture destroyer'.<sup>33</sup> The attempt to determine the essence of the race as the substance of the nation-state however, reproduces the contradiction of 'alienated spirit' through which the French Enlightenment is determined as a destructive idealism. In trying to specify what is 'Aryan', the Nazi discourse contradicts its apparent intention to reform the ethical life of the state; for the project of racial purification reveals itself as a destructive bad infinity.

After the Nazis came to power, this concept [of the absolute equality of all Germans in the *Volksgemeinschaft*] lost its importance... The *Volksgemeinschaft* was merely a propagandistic preparation for an 'Aryan' society which in the end would have doomed all peoples, including the Germans. [*Origins of Totalitarianism*, 360-1]

As with the French Enlightenment, the 'culture' of Nazism makes its absolute an indeterminate 'material' which is an object of faith for those individuals who supposedly exist in and through it. Nazism is a violently instrumental idealism, which treats the individuals who constitute the ethical substance of society, as more or less adequate examples of the 'Aryan' race.

The vocation of Nazism to 're-form' the lawlessness of the nation-state, is an historical reoccurrence of self-consciousness as a pure, violent 'culture'. The 'mythological' determination of the Nazi discourse does not except it from the

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speculative determination of 'alienated spirit': the terror of Nazism is constituted through the same contradictory relationship of subjectivity to the objective determination of ethical life' which prevented the French Enlightenment from producing an ethically reformatory movement. Nazism is incapable of realizing the notion of *Volksgemeinschaft*: a community of substantively equal beings cannot be made actual through the 'culture' of racial destiny.

The absolute purity and dominance of the 'Aryan' race, which is the aim of Nazism, constitutes self-consciousness as a violently instrumental idealism, which completely disregards the substance of the ethical. By seeking to realize the unspecifiable concept of the 'Aryan', Nazism destroys and perverts the satisfaction of work, enjoyment and desire constituted in ethical life, and dissipates the social and material wealth of the nation-state in its millennial projects. Its 'propagandistic' intention to reform the lawlessness of the ethical life which is its precondition, actually deepens the dislocation of the state, reducing its cohesion to an undeterminable belief in the original superiority of the 'Aryan' race. The end (termination) of the Nazi mythology therefore, is not, as Lyotard claims, simply 'police action' which destroys its hegemony but leaves its self-consistency unrefuted. Its ultimate destruction from outside, is actually brought about by the nihilistic relationship which the 'Aryan' self-consciousness assumes towards its own nation-state.

The understanding of the terror of the French Revolution presented in *The Differend* therefore, fundamentally misrecognizes Hegel's notion of a 'culture' of self-consciousness. Lyotard's claim is that the terror of the revolution can be sublated by speculative discourse because of the former's invocation of a universally 'rational will'. The historical transition to the moral self-consciousness which conceives its freedom as distinct from the 'heteronomy' of ethical substance, is presented by Lyotard as possible through the *Phenomenology's* predetermination of a non-exceptional universality of the self (*Selbst*):

We think of terror. But the Jacobin Reign of Terror allows no

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exceptions... the legislator is obligated to the transparency of pure will by the same token as everyone else, he is thus suspect like them. The particular terror merely verifies the principle of autonomy. [*The Differend*, 153]

The possibility of determining such a definite 'result' from the occurrence of 'Auschwitz' however, does not, on Lyotard's understanding, exist; for the Nazi discourse simply 'excepts' the Jewish race from the concept of humanity, and 'obligates' them to die. Speculative thought cannot salvage the universality of the self from the forms of legislation and obligation determined at Auschwitz:

At 'Auschwitz'... exception is what rules. Its speculative name is not the rational terror that is extended infinitely because good will is to be required from every you. Nazism requires nothing from what is not 'Aryan' except for the cessation of its appearing to exist. [*The Differend*, ¶159]

This understanding of Nazism and the event of the death camps relies upon the misconception of speculative thought which is set out in *The Differend's* 'notice' on Hegel. Lyotard's presentation of the transitions expounded in the *Phenomenology*, is that they presuppose the 'generic' rule of the *Resultät*, which is formulated as 'Engender every phrase as the expressed identity of the proceeding ones, including the present phrase'.<sup>34</sup> Speculative development is expounded as self-consciously postponing its mediation of reason's abstract forms, in order to determine the history of Absolute Knowing as the 'equivocation' and 'effectuation' of identity. Lyotard's idea of the *Resultät*, attempts to show that speculative thinking's claim to have no 'natural', or 'posited' beginning, actually presupposes the mediatedness of spirit in the determination of its transitions. On this reading, it is possible to 'name' the speculative result of each transition expanded in the *Phenomenology*, only because the Idea of the Self (*Selbst*) has predetermined self-identity as negative and contradictory.

The beginning can appear as this final result only because the rule of the *Resultät* has been presupposed from the beginning. The first phrase was linked onto the following one and onto the others in conformity with this rule. But this rule is merely presupposed and not engendered. [*The Differend*, 97]

The detail of Lyotard's misrepresentation of the transitions expounded in



the *Phenomenology*, has already been set out in the first section of the present chapter. The point that needs to be restated however, is that Hegel's method of exposition is thoroughly historical: the contradictions through which abstract reason develops, cannot be reduced to the pure activity of the universal self ('*Selbst*') 'effectuating' particular transitions. Hegel's speculative method is concretely rooted in the forms of abstract understanding (*verstand*); it cannot be separated from the exteriority determined in the development of natural consciousness,

The [speculative] movement includes within it the negative factor, the element which would be named falsity if it could be considered one form which had to be abstract. The element that disappears has rather to be looked at as something essential... Appearance is the process of arising into being and passing away, a process that... constitutes reality and the life movement of truth [*Phenomenology*, 105]

Neither the logical idea of the Notion, nor the *Phenomenology's* absolute self-recognition therefore, determine their histories as pure teleology; both of these conceptions become explicit only after their necessity emerged from actual contradictions.

It is *The Differend's* particular reading of speculative thought, which informs Lyotard's conception of the end of ethical life. By conceiving the transitions described in the *Phenomenology* as '... the *Selbst's* infinite movement of alteration, which is potential in the universe of the slightest phrase on account of its being disposed in several instances',<sup>35</sup> Lyotard fails to recognize that the infinity to which the self is subject, is the substance of its own ethical recognition. The transitions described in the *Phenomenology* are determined through the 'actuality' of misrecognition; that is, through the abstract formations of subjectivity and objectivity determined in (relative) ethical life. 'Every moment', Hegel remarks in the 'preface', 'is necessary; ... for each is itself a complete individual form, and is fully and finally considered only so far as its determinate character is taken as a concrete whole'.<sup>36</sup> Consciousness does not wait upon the activity of its universal idea to 'engender' the contradictions by which it develops towards absolute knowledge: the necessity of mediation as

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the ground of the ethical is produced through the individuality of each form of abstraction. Spirit, is determined through recognition of the concreteness of misrecognition with the true:

... that which obtains distinctness in the course of its [Spirit's] process, and secures specific existence, is preserved in the form of a self-recollection, in which existence is self-knowledge, and self-knowledge gain immediate existence. [*Phenomenology*, 105-6]

Lyotard's understanding of 'Auschwitz' is that it discloses the Nazi discourse of 'Aryan' destiny as an absolutely non-speculative moment. The law which is decreed by this mythology of Aryan destiny, determines the 'obligation' of the racially inferior 'other' as pure terror; a terror which culminates in the unredeemed and irredeemable death of the Jewish deportee in the death camps. This heterogeneity of the law and the obligation it determines, is presented by Lyotard as the impossibility of 'engendering' a speculative 'result' from the mythological discourse of Nazism:

Here is a name ['Auschwitz'] within which speculative thought would not take place. It wouldn't therefore, be a name in Hegel's sense, as that figure of memory which assures the permanence of the referent and of its senses when spirit had destroyed its signs. It would be a name without a speculative 'name', not sublatale [irreducible] into a concept [*The Differend*, ¶152]

This is a fundamental misrepresentation of the relationship between spirit as such, and the individual moments through which consciousness passes prior to absolute self-recognition. The *Phenomenology's* account of the development of consciousness towards absolute knowledge, grounds the necessity of mediation between subject and object ('truth and knowledge') in the historical contradictions of the abstract understanding (*verstand*). The 'diversity' though which self-consciousness develops towards recognition of its idea therefore, is fully determined by the negative activity of finite spirit in relation to the forms of its misrecognition. In absolute knowledge however, the forms through which consciousness had substantiated itself are preserved as non-deterministic moments of self-determination; the autonomous existence of the subject is mediated through a 'reflective' recognition of the contradictions which formed it,



While in the *Phenomenology of Mind* each moment is the distinction of knowledge and truth... Absolute Knowledge does not contain this distinction and supersession of distinction. Rather, since each moment has the form of the notion, it unites the objective form of the truth and the knowing self in an immediate unity. [*Phenomenology*, 805]

As absolute self-reflection, consciousness ceases to be externally determined by the actuality of its forms. It is no longer the 'natural' misrecognizing 'ego' of the *Phenomenology's* historical exposition; but has become existence in and for itself, the 'restless activity of negation'.

The 'pure matter' which the French Enlightenment conceives as the true substance of ethical life, determines a violently idealistic and utilitarian revolution which destroys, rather than transforms the substance of actual social relations. From the perspective of absolute self-recognition, the Nazi discourse of 'Aryan' superiority is determined by the same inability to reform the lawless ethical life which gives it its 'vocation'. Self-consciousness redetermines the impossibility of a universal legislative 'being' which remains absolutely distinct from the actual individualities which it purports to liberate. Ethical life cannot be sustained on the basis of the relationships of subjectivity to actuality posited by 'alienated' spirit.

Speculatively conceived, the event of 'Auschwitz' is determined by a discourse of absolutely indeterminate 'being' which destroys the actual substance of ethical life. Nazism's attempt to except the Jewish race from the concept of humanity, involves self-consciousness in a constant redefinition of 'Aryan' purity: it cannot determine the 'essence' of the particular which it must sustain as universally dominant. The discourse of Nazism, reproduces the dualistic determination of self-consciousness constituted in the Terror of the French Revolution. For although the latter explicitly invokes the concept of a universal 'matter' of autonomous human association, the relation of its activity to the substance of ethical life is essentially violent and destructive. The necessity of sublating this perverted and perverting self-consciousness is not exclusively determined by its claim to speak for the 'pure matter' of humanity.

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It is the liquidating relationship of consciousness' revolutionary 'culture' to the actual determinations of ethical life, which constitutes the contradictoriness of 'alienated spirit',

It is thus the interaction of pure knowledge with itself; pure knowledge qua essential reality is a universal will, while this essence is simply and sole pure knowledge... In the same way objective reality, 'being', is for it absolutely self-less form; for that objective reality would be what is not known; this knowledge however, knows knowledge to be the essential fact. [*Phenomenology*, 610]

What Lyotard alights upon when he claims that the 'Rational terror [of the French Revolution] is inclusive and progressive'<sup>37</sup>, is not the definitive recognition of Hegel's alienated spirit. The dialectic of the 'Terror', as it is expounded in the text of the *Phenomenology*, is the historical conclusion of self-consciousness' development through the 'culture' of dualistic subjectivity. The destructive relation through which the French Enlightenment perverts and disrupts the substance of the ethical, produces the transition to morality. It is this universal 'vocation' of self-consciousness to form ethical life which determines the 'recognition' of rational individuality as the ground of abstract rights and bourgeois property law. The abstractly free will becomes the locus of absolute respect and dignity.<sup>38</sup>

That the Nazi terror fails to 'engender' such a determinate 'result' however, does not, as Lyotard maintains, foreclose upon the possibility of ethical mediation. Taken speculatively, the discourse of Nazism is determined as a 'culture' of self-consciousness whose activity deepens the lawlessness of the ethical life which produces it. The projects of racial purification and global conquest which ultimately bring destruction to the ethical life of the nation state, derive from the demands of an unspecifiable 'matter' of pure humanity (the concept of the original 'Aryan' being). The heterogeneity of law and obligation as they are constituted in the Nazi mythology does not simply negate the aporetic determination of consciousness' 'subjective culture'. As an objective, historical moment, the Reich could not maintain its racial discourse as the ground of a substantive ethical life; while in terms of spirits' 'reflective'



determination as absolute knowing, the culture of Nazism is recognized as a 'form' (of self-consciousness) which necessarily returns individuality to nothingness.

Nazism's reformatory intention, like that of the French Revolution, is constituted as an irrational belief which violently disrupts the substance of ethical life: the 'pre-modernity' of the Nazi discourse reproduces a form of self-consciousness which the *Phenomenology* has shown to be ethically and politically inadequate. The content of the Aryan mythology therefore, must be understood in terms of the relationship of self-consciousness to the ethical substance which determines it, and which is determined by it. The lawlessness and destitution of the Weimar Republic forces self-consciousness to find satisfaction in a mythology which ultimately completes its loss of substance. 'Auschwitz' does not present a discrete, 'non-totalizable' moment to speculative thought, but determines the extremity of self-consciousness' alienation from substantive ethical existence. The liquidating heterogeneity of law and obligation which appears in the extermination camps, is part of the 'Aryan' self-consciousness' destructive vocation to purify itself and its world.

Lyotard's conception of 'Auschwitz' as the historical event which cannot be speculatively sublated, relies upon a misrepresentation of the relationship of spirit to its forms which is expounded in the *Phenomenology*. The destructively idealistic self-consciousness which emerges from the French Enlightenment, is the historical form whose contradictions demonstrate the impossibility of determining ethical life through an unmediated 'general will'. The transition from self-consciousness' belief in a universal 'matter' of human association to the rational necessity of the morally autonomous individual, is produced through the destructive actuality of 'Absolute freedom'.

The 'culture' of the French Revolution, produces the moral Autonomy of the will as a concrete necessity for natural consciousness. The particularity of this sublation however, does not determine the 'distinctiveness', or 'specific

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existence', of the form of alienated spirit which is preserved in absolute self-recognition. In thinking itself through the concrete determinations of ethical life, self-consciousness returns to the culture of 'alienated spirit' as a form which cannot determine ethical activity. The 'reflective' awareness of knowing does not depend on production of novel contradictions from the substance of actual states: its 'freedom' is the power to determine its existence through 'self-recollection' of the forms through which it has developed.

'Auschwitz' does not 'block' speculative thinking. Its essential determination is the destructive relationship which the 'Aryan' culture assumes to ethical life; and as such, can be speculatively 'thought' in terms of its fatal contradiction of the law of the notion.

Nazism, by its determination to carry out the genocide of the Jewish race and the subjugation of all non-Aryans, is recognized as determining the necessity of its own destruction. The demand to actualize the original superiority of the race, not only in the internal ethical constitution of the state, but also in the acquisition of new 'living space' for the Reich, necessitates conflict with all those nations who oppose the destiny of the 'Aryan' race. That the Third Reich was ultimately 'put down' by war and invasion therefore, is part of the actual determinations of Nazism's racial politics. The absolute heterogeneity of law and obligation which determines the genocidal imperative of this discourse, cannot engender a substantively new mediation. The moral self-consciousness which followed the terror of the Revolution has already been produced and sublated in spirit's historical development. Thus, Nazism's destruction is recognized by speculative thinking as the necessary consequence of its relationship to the substance of ethical life: the law of the notion (infinitely self-determining subjectivity) 're-cognizes' its necessity through the reappearance of absolute lawlessness and 'barbarism'.

For Hegel, the concept of 'the good' cannot be posited in a definitive statement. It is only through the recognition of positing as inadequate to realize

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the absolute, that speculative thought has the power to reform the actuality of ethical life. The law of the Notion does not, as Lyotard's argument maintains, demand the infinite reproduction of substantially new contradictions and mediations; but determines the finitude of ethical life through the (abstract) forms set out in the *Logic* and the *Phenomenology*.

... good in its concrete existence is not only subject to destruction of external contingency and by evil, but by the collision and conflict of the good itself.[*Science of Logic*, 820]

Absolute ethical life cannot cease to be speculative; it is always 'afflicted with a determinateness of subjectivity'<sup>39</sup> which contradicts the idea of the Notion. This contradiction however, does not take the form of an (unrecognized) external domination; the law of the Notion is present in every form of subjectivity which becomes determinate within the state. As such, this law neither constitutes the 'actual' as dominant over the self-reflection of consciousness, nor determines consciousness itself as an absolute demand (*Sollen*) ranged against all immediate existence. The 'Idea of the Good' is determined as the 'real necessity' through the contingent determinations of actuality.

The law of Nazism reproduces the contradictory determination of consciousness as a 'culture' of pure, destructive subjectivity. The evil which is perpetrated through this mythology of 'Aryan' destiny therefore, destroys the actual mediations by which the ethical life of the state is sustained. Every desire, endeavour, or satisfaction constituted within this life becomes subject to the absolute demand of the race; there is no possibility of realizing the good in any (objective) form, other than the nihilizing activity of service to race. As Arendt remarks in her analysis of totalitarian movements, '[they] can remain in power only so long as they can keep moving and set everything around them in motion'.<sup>40</sup> The hegemony of the Nazi law, destroys the determinateness of subjectivity through which the idea of the good is made actual. Speculative recognition of this law as a self-destructive 'evil', is possible only within states which recognize the actual finitude of subjectivity.

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The idea of the good determines ethical life through finite spirit's recognition of 'real necessity' in its own contingent forms. Hegel remarks in the *Logic*,

This necessity is at the same time relative... it has its starting point in the contingent... the real actual is the determinate actual, and has first of all its determinateness as immediate being in the fact that its is a multiplicity of existing circumstances [*Science of Logic*, 549]

Speculatively conceived, the concept of a universal ('self-existent') selfhood is constantly re-formed within the absolute ethical determinations of particular states, all of which remain subject to the violence and dissolution of finitude. Lyotard's demand that speculative thinking ought to be able to 'name' a specific moment of ethical mediation 'resulting' from the Nazi discourse fails to recognize that the substance of good cannot be determined through what is essentially a 'culture' of self-consciousness. The law of Nazism contributes to spirit's absolute self-knowledge through its ultimate destruction of the nation-state which it intends to reform. Empirical history, in other words, reproduces this contradictory 'culture' of self-consciousness as a moment of absolute domination of the German nation-state by the 'Aryan' mythology: it is the objective necessity of its destruction which must be recognized by speculative thought.

Speculative philosophy therefore, is not 'blocked' by the Nazi discourse and the event of 'Auschwitz'. On the contrary, the necessity of the law of the notion is 're-cognized' in the objectively determined fate of Nazism to destroy itself. the 'adversaries' who put an end to the Reich are not, as Lyotard contends, powerless to refute the Nazi mythology, or to think speculatively about the event of the holocaust. It is for them, as ethical forms, that the speculative determination of Nazism is not only possible, but necessary.

Lyotard's understanding of 'Auschwitz' as 'an experience of language which brings speculative discourse to a halt'<sup>41</sup> therefore, is based upon a fundamental misrepresentation of speculative method. His reduction of the method expounded in the *Logic* and the *Phenomenology* to the operation of a

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predetermined 'result' (the Notion, Absolute Knowing), produces an impossibly abstract, non-historical conception of the Nazi genocide. It is only by abstracting the racial 'culture' of Nazism from the historical context into which it emerges, in other words, that Lyotard is able to sustain the idea of 'Auschwitz' as an absolutely non-speculative moment.

The intention of this 'speculative' exposition of Lyotard's idea of 'Auschwitz', is not simply to show that his understanding of Nazism is 'wrong', but that it is part of a basic misrepresentation which is continued throughout the text of *The Differend*. By demonstrating that the historical event of 'Auschwitz' does have a speculative significance, the possibility of maintaining thinking's relation to the present as absolute heterogeneity and contingency, is refuted. The ethical significance of Lyotard's idea of the differend, in other words, is crucially undermined; for without the necessity of spontaneous 'linkage' onto the present, the phrasing of 'wrong' is reduced to an abstract and subjective 'law of the heart'.

Thus, the basic ground of a speculative understanding of Lyotard's project is established. Ethical and political claims cannot be made on the basis of absolute, spontaneous heterogeneity; and it is in trying to carry out just this project, that Lyotard systematically misrepresents both Kant and Hegel. The following three chapters, therefore, will show that in misrepresenting Kant's critical philosophy, Lyotard fails to recognize the import of Hegel's critique of Kant, and its significance for ethical and political thought.

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## Chapter I

## Notes

1. Jean-François Lyotard, *The Differend*, trans. Georges Van Den Abbeele, Minnesota: University of Minnesota Press, 1988.
  2. See Theodor W. Adorno, 'Meditations on Metaphysics' in *Negative Dialectics*, trans. E.B. Ashton, London: Routledge, 1973.
  3. Both Readings, in his *Introducing Lyotard: Art and Politics* (London: Routledge, 1991), and Bennington, in his *Lyotard: Writing the Event* (Manchester: Manchester University Press, 1988), are concerned to endorse the dislocating non-objectivity of the phrase. Bennington expounds Lyotard's concept of the phrase as the 'analogical or symbolic' form of presentation whose indubitability lies precisely in the 'fact' of its non-objectivity. 'The sentence [phrase] is an analogical presentation of the event, which is as such unrepresentable' [*Lyotard: Writing the Event*, 177]. For Readings, it is the singularity and non-contextuality of the moment of linkage (phrasing of the event) which remains always undetermined by genres of discourse; '... the "phrase", as the elementary particle is resistance to grand narratives and metalanguages' [*Introducing Lyotard*, 113]. Chapters one and two however, will show that the non-objectivity of the temporal instant constitutes a negative ('sceptical') relation of self-consciousness to its experience, which cannot produce any substantive judgement. Mind is reduced to a doubt which doubts its own negativity.
  4. For Lyotard, Western, or 'Occidental' philosophy, is characterized in general by a desire to represent the world of 'events' as a congruent totality, and so give its ethical and political projects secure transcendental foundations [*Heidegger and 'the jews'*, 22]. According to Lyotard's account, this tendency to represent and formulate the contingency of particular events within the 'architectonic' systems of reason, constitutes an
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indeterminate 'otherness' which it can never 'forget' nor sublimate. It is this impossibility of 'forgetting' those excepted from discourses of legitimation ('the jews'), and the 'unconscious affect' which this constantly reproduces 'outside' representational thinking, that Lyotard proposes as the power originating the Nazi Holocaust. The death camps attest to the 'unthinkable' otherness which philosophy attempts to forget, and which Nazism tries to annihilate both in fact and in memory. Lyotard remarks of the Holocaust, 'The solution was to be final: the final answer to the "Jewish" question. It was necessary to carry out right up to its conclusion, to "terminate" the interminable. And thus to terminate the term itself [*Heidegger and 'the jews'*, 22].

5. *The Differend*, ¶26.

6. *Ibid.*, ¶158.

7. *Ibid.*, ¶97.

8. *Ibid.*, ¶60.

9. *Ibid.*, p94.

10. *Ibid.*, p96.

11. *Ibid.*, p97.

12. G. W. F. Hegel, *The Phenomenology of Mind*, trans. J. B. Baillie, New York: Harper and Row, 1967.

13. *Ibid.*, 96.

14. Bennington remarks in *Lyotard: Writing the Event*, 'Any "we", even that of

“humanity” ... is dispersed: which is why Auschwitz is something new, and why it brings down the self of the speculative dialectic. Auschwitz is therefore immediately the question of ‘after Auschwitz’, if not enough of a “we” remains to ponder the dispersion of the we at Auschwitz’ [*Lyotard: Writing the Event*, 151]. (this remark brings out the fundamental misrecognition of Hegel’s speculative phenomenology which is maintained throughout *The Differend*. Speculative exposition of self-consciousness’ relation to the totality of ethical life does not attempt constantly to determine ‘new’ categories of ethical sublation. The concept of spirit cannot be conceived in terms of an infinite accommodation of ethical dissolution. Rather, the question of ‘after Auschwitz’ must be approached in terms of the breakdown of the substance of ethical life which produced the death camps, and the possibility of empirical history reconstituting equally, or even more destructive distortions of subjectivity.

15. *The Differend*, p97.

16. For Lyotard, the ‘law’ of the SS is non-speculative because its ‘mythological’ infinitude cannot pass over into the finite forms of work and conscience which the speculative concept of law requires; just as the deportees’ obligation to die cannot pass over into the infinite. ‘The infinity of the legislator’, he argues, ‘would have to become for itself the finitude (of a good conscience, of the absence of risk, of force); the finitude of the obligated one would have to become for itself the infinity (that he knows and wants the law ordering his death)’ [‘Discussions, or phrasing “after Auschwitz”’, trans. Georges Van Den Abbeele, in ed. A. Benjamin, *The Lyotard Reader*, Oxford: Basil Blackwell, 1989, 379]. The ‘we’ of universal subjectivity cannot, on this reading, emerge from the ‘Auschwitzian’ determination of ‘normative’ and ‘prescriptive’ phrases. Lyotard’s exposition however, fails to conceive that this very discontinuity of law and obligation has a profoundly speculative significance. It is through its inability to re-cognize the necessity of the law, self-consciousness becomes part of a violently idealistic



‘culture’, which spirit, as the activity of ‘world mind’ [*Philosophy of Right*, ¶352], must act against.

17. *The Differend*, ¶152.

18. *Ibid.*, 97

19. *Ibid.*, ¶103

20. For Lyotard, the event of ‘Auschwitz’ necessitates acknowledgement that the ‘moments, formations, and entities’ [*Heidegger and ‘the jews’*, 29] through which Western philosophical thought attempts to constitute its historical ‘memory’ of the present totality, are always subverted by an indeterminate otherness which afflicts every attempt at sublation. Following Adorno’s exposition of the Holocaust in *Negative Dialectics*, Lyotard maintains that ‘Auschwitz’ is the ruination of thinking’s systematic pursuit of identity; that the evil of the death camps can only be attested to by writing the untotalizable complaints and sufferings which survive the Nazi slaughter. Testimonies to the event of mechanized destruction of the Jewish people, as Primo Levi observed in *The Drowned And The Saved*, can only be of limited significance; they can do no more than hint at the experience of the ‘complete witnesses whose disposition would have a general significance’ [Primo Levi, *The Drowned And The Saved*]. In his ‘Meditations on Metaphysics’ [*Negative Dialectics*, 361-408], Adorno remarks that ‘after Auschwitz’ it is only through such ‘micrological’ testimony that dialectics can sustain its claim to proceed through presuppositionless critique. ‘Micrology’, he remarks, ‘is the place where metaphysics finds haven from totality. No absolute can be expressed otherwise than in topics and categories of immanence, although neither in its conditionality nor as its totality is immanence to be deified’ [*Negative Dialectics*, 407]. For Lyotard however, not even a ‘negative dialectics’ can survive absolute heterogeneity of law and obligation which happens at

'Auschwitz'. Adorno's project presupposes the same rule of immanent derivation which allows speculative dialectics to re-engender constantly the 'we' that 'results' in universal selfhood. Negative dialectics, by always rejecting the immanence of identity, also, on Lyotard's reading, constitutes a teleological project in which the 'critique' of representation becomes an end in itself. 'Otherness' is never allowed to express ('phrase') the particularity of the wrong done to it.

21. *Negative Dialectics*, 405- 408

22. 'Discussions, or phrasing "after Auschwitz"', trans. Georges Van Den Abbeele, in ed. A. Benjamin, *The Lyotard Reader*, Oxford: Basil Blackwell, 1989.

23. The discussion of Lyotard's attempt to abstract generic discourses from the substance of ethical life, is developed further in chapter four, section two.

24. Hegel's conception of a 'culture' of consciousness is originally expounded through the idea of Feudalistic relations as a 'lawless' social organization based upon force and coercion. Self-consciousness, confronted by this disorganized social order, attempts to reform the entirety of its concrete social existence; it attempts to impose its own arbitrary principles upon the totality. The result of this reformative intent however, is to reinforce the lawlessness of the social order which produced it: self-consciousness becomes the agent of an unmediated reformative intent which is incapable of finding satisfaction in any determinate form. The substance of ethical life becomes determined through its misrepresentation in each discrete subjectivity; a misrepresentation which is constantly reimposed upon the lawless actuality it presupposes. The 'unity' of substance and subjectivity which is brought about by this culture therefore, is 'false', or 'pure': 'it is an experience of the unity of consciousness and the world, but of a misrepresenting consciousness and a lawless world' [Gillian Rose, *Hegel*

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*Contra Sociology*, London: Athlone, 1981, 164]. It is this exposition of the 'barbarism of pure culture', given in the *Jenaer Schriften*, which is the precondition of the *Phenomenology's* exposition of the French Revolution as absolute terror.

25. *Phenomenology*, 383-412

26. *The Differend*, 92

27. *Phenomenology*, 602.

28. *Ibid.*, 605.

29. Ritter, in his *Hegel and the French Revolution*, makes it clear that the problems raised in the *Phenomenology's* section on 'Absolute Freedom and Terror', do not find a definitive solution in the transition to morality. The question of political stability raised by the revolution's liberation of subjectivity from uncritical dependence upon the established (feudal) order, is one which, for Hegel, remained to be resolved; for the 'moral view of the world', through its insistence upon formal universality as the condition of ethical action, merely points to the necessity of practical reason's objective mediation in ethical life (*Sittlichkeit*). Thus, as Ritter remarks, 'For Hegel the immediate consequence of [the] negativity of the revolution is that it discovered and brought about no lasting political solutions.' [45]. The problem of the relationship between free subjectivity and the substantive organization of the state therefore, is something which self-conscious reason (spirit) must constantly re-cognize.

30. *Ibid.*, 305-341.

31. *Ibid.*, 314.

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32. G. W. F. Hegel, *The Philosophy of Right*, trans. T. M. Knox, Oxford: Oxford University Press, 1945, ¶244.
33. Lyotard, in the essay *Heidegger and 'the jews'*, attempts to show that the concept of an unrepresentable 'revelation' of the word of God in Jewish theology, is that which constitutes the Jewish people as the irreducible 'other' of every community - including their own worldly existence. The Jewish notion of 'revelation' is for Lyotard the theologization of the unrepresentable, that is, of the word that can never be encompassed in the secular ('pagan') life of the community. It is this heterogeneity, or 'otherness', which the Nazi mythology represents as the evil that must be liquidated and 'forgotten'.
34. *The Differend*, p97.
35. *Ibid.*, p93.
36. *The Phenomenology of Mind*, 90.
37. *The Differend*, ¶159.
38. For a more detailed discussion of Lyotard's reading of Kantian morality, see chapter three.
39. *Ibid.*, 820.
40. *The Origins of Totalitarianism*, 306.
41. *The Differend*, ¶152.
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## Chapter II

## Presentation, Misrecognition and Ethical Life

The phrase, for Lyotard, presents the event as the irreducible discontinuity of past and future. This discontinuousness is disclosed by phrases as the undetermined necessity of linkage onto the 'current' phrase, which is itself a moment of contingent linkage onto a prior occurrence (phrase event). Phrases then, occupy present time as particular universes (i.e. disposition of sense, referent, addressees and addressors) which necessitate linkage, but which cannot predetermine what that linkage must be,

One phrase calls forth another, whichever this might be. It is this, the passage, the time, the phrase (the time in the phrase, the phrase in time) that survives the test of doubt. Neither the sense of the phrase, nor its reality are irreducible. [*The Differend*, ¶102]

Thus Lyotard's attempt to write the uniqueness and contingency of the event is disclosed through the idea of 'presentation', or the indeterminate 'what' (of occurrence) which is both disclosed and undisclosed by phrase regimes. The indubitability of the phrase, in other words, is its simple irreducibility: everything that can be addressed to the phrase must itself be phrased, must itself be an occurrence. Presentation as such, of the phrases' discrete determination of the immediate, cannot be presented; it remains an inescapable indeterminacy which the current phrase always 'forgets'.<sup>1</sup>

Being therefore, is infinitely dispersed through the temporality of presentation; that is, through the necessary contemporaneity of one phrase, and the necessity of contingent linkage onto phrases,

The necessity of there being *And a phrase* is not logical (the question of 'How?') but ontological (the question of 'What?') [*The Differend*, ¶103].

To 'present' the being of a phrase is to determine it as an 'existent' within a phrase universe, and so once again to 'forget' the occurrence of an undetermined moment of presentation. This however, does not mean that

phrases 'operate' to defer the presentation of their presentation; there is no functional identity among them. Rather, phrases are simply the uniqueness of their occurrence; they are, 'Not Being, but one being, one time, [un être, une fois]'.<sup>2</sup>

Generic discourses are related to phrase regimen as 'unique finalities' [¶180] competing to appropriate the occurrence for their particular 'ends'. Genres, in other words, articulate an idea which places the heterogeneity of immediate presentation within an homogenizing teleology,

The abyss that separates them [phrase regimen] would be, if not filled in , at least covered over or spanned by the teleology of genres of discourse. [*The Differend*, ¶180]

Each genre claims to determine the 'true' significance of the phrases' immediate presentation, and to subsume that presentation under a universal necessity. Thus differends occur through the contingency of linkage onto the event. In attempting to appropriate the 'Is it happening?' for their particular 'ends', genres present heterogeneous discourses for which there is no universal moment of mediation or judgement. Lyotard's conception of the ethical therefore, is fundamentally determined by the temporality of presentation: : 'obligation' to the otherness which is always co-present with representational discourse, is a pure spontaneity which cannot be reduced to diachronic time. The immediacy of presentation constitutes the necessity of phrasing wrong and victimization independently of predetermined concepts; that is, of judging the incommensurability of heterogeneous genres.

The idea of presentation which Lyotard expounds in *The Differend*, has its roots in the unintuitable, undelimitable energy of the 'libidinal band', the violence of whose relation to conceptuality Lyotard sets out in his *Libidinal Economy*.<sup>3</sup> Nothing which occurs within the 'primary process' of the libido is spatially or temporally describable; as pure immediacy, or intensity, each 'segment' is forgotten before language can even begin to describe it. In *The Differend*, this unrepresentability is re-articulated as the ontological necessity of



the phrase: each regime presents a 'universe' within which presentation as such cannot appear. For Lyotard, linkage onto the current phrase can never be produced through conceptual necessity: it is always an 'event' in which predetermined necessity is called into question for critical judgement. The reading of speculative thought which Lyotard develops in the 'Result' section of *The Differend*, attempts to show that Hegel's exposition of the development of consciousness, is determined by a metaphysical idea of the self (*Selbst*). The transitions described in the *Phenomenology*, in other words, are presented as entailed in a 'protocol', or set of rules, which predetermine the 'productive' aporias and contradictions set out in the history of self-consciousness. On this reading, the development of natural consciousness towards self-recognition, is maintained only through Hegel's fixing of its actuality in the idea of universal selfhood. Speculative exposition is dominated, according to Lyotard, by the necessity to produce dialectical sublations of an 'otherness' which it has already produced as sublatale.

This understanding of speculative philosophy as a form of generic discourse fundamentally misrepresents the conception of actuality which is developed in the *Phenomenology*. Each of the moments through which Hegel expounds the development of self-consciousness is concretely historical: the aporias set out in the body of the *Phenomenology*, are identical with the work, satisfaction and desire formed within the particularity of ethical life. Speculative phenomenology therefore, expounds the development of consciousness through its misrecognitions of its own actuality. The contradictions which drive this development impose nothing external upon the 'special and peculiar character'<sup>4</sup> of each ethical form; they articulate the abstraction of difference (particularity) from the objective conditions in which it is actual (*Sittlichkeit*). The argument set out in this chapter will show that Lyotard's idea of 'presentation', and the ethical and political problematics which are conditioned by it, presuppose a reading of Kant's *First Critique* which fundamentally misrecognizes the significance of transcendental subjectivity.

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The critique of Kant which Hegel develops throughout his speculative writing therefore, expounds the lack of unity posited and re-posed throughout the critical philosophy: the transcendental subject, according to Hegel's reading, has its true significance in the abstract particularity produced through its practical and theoretical determinations of reason. It is this lack of unity which Lyotard appropriates from the critical philosophy. The transcriptions of the *First* and *Second Critiques* which are set out in *The Differend*, attempt to show that the moments of conjunction (*Darstellung*) articulated in critical ethics and epistemology, disclose an otherness which remains undetermined by the transcendentalism of the subject. Lyotard's reading of the *Third Critique* attempts to show that judgement is the spontaneous condition of 'transcendental realms of legitimacy'<sup>5</sup>; and that this spontaneity can only be 'obligated'<sup>6</sup> to its originary power of phrasing difference and differends. The argument I will develop through the rest of the thesis, is that Lyotard's appropriation of heterogeneity and spontaneity from the critical philosophy, fails to re-cognize the significance of Hegel's critique of Kant; and that this failure is played out in the aporias which afflict his ethical and political problematics. Initially therefore, I will examine Lyotard's attempt to transcribe phenomenal experience as critical philosophy's original 'negotiation' of otherness.

Speculative philosophy expounds the development of self-consciousness through the necessary elements of its finitude: desire (the conception of need), work (transformative activity), and enjoyment (consumption, satisfaction of need), are 'actualities' which natural self-consciousness must ultimately acknowledge as rationally mediated determinations. The abstractions through which consciousness misrecognizes its substance, are the same forms through which its activity becomes identical, with the 'reflective' re-cognition of absolute knowing. Hegel's idea of spirit, in other words, is not opposed to the being, or finitude, of self-consciousness; rather it is the recognition and realization of that finitude.<sup>7</sup>



Both Hegel and Lyotard, in setting out their respective positions on ethics and philosophy, develop sustained critiques of Kant's general claim that knowledge as such, is always cognitively determined. Lyotard's reading of Kant's account of phenomenal experience in the *First Critique*, is an attempt to show that the idea of critical subjectivity entails the domination of 'presentation' by 'representation'. Cognition, or the rules of the 'cognitive genre', has suppressed the 'givenness' of the 'is it happening?'. This reading however, fails to recognize the actuality of Kant's critical subject: it gives no account of how phenomenal experience is related to the concrete determinations of self-consciousness. Lyotard's misrepresentation of Hegel's speculative phenomenology therefore, conditions an understanding of Kant's doctrine of experience which reinforces the aporias of subjective finitude.

The reading of the critical philosophy which Lyotard articulates through four separate notices in *The Differend*, is a sustained attack upon Kant's notion of *Darstellung*, or the possibility of conjoining the 'heterogeneous faculties'<sup>8</sup> of a transcendental subject. This critical idea of a necessary 'adjunction' of discrete faculties of knowledge, in other words, is presented as the moment at which the heterogeneity of generic discourse invades the cognitive integrity of the Kantian subject.

The presentation [of a particular 'cognition'] does not come from anywhere other than the subject, it is the confrontation of the subjects' works with other works by the subject, except that their joining together... takes place between the heterogeneous faculties, that is, between phrases subject to different regimens or genres.' [*The Differend*, 64]

The 'protocol' of the cognitive genre (subsumption of objects under *a priori* concepts) is unable to contain the differends which necessarily emerge among transcendental faculties. Thus, Kant's attempt to establish philosophy on the ground of the proper determination of 'cognitions,' is for Lyotard always confronted with the impossible task of constituting 'universal rules of judgement between heterogeneous genres'.<sup>9</sup>

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The thesis which is maintained throughout the critical philosophy, is that all true knowledge is grounded in objective processes of cognition. In the *Critique of Judgement*, Kant states explicitly that the 'realms' of theoretical and practical reason determined in the first two *Critiques*, constitute a division within the single 'territory' of the will's *a priori* legislative activity: each of these realms is exclusively governed by the faculty through which its laws are prescribed. The problem which Kant specifies in the introduction to the *Third Critique*, is how it can be possible for the rational cognition of autonomy, to be reconciled with the heterogeneous determination of phenomenal experience. How, in other words, is it possible to bridge the 'great gulf' determined by faculties whose legislation appears as radically heterogeneous.<sup>10</sup>

The concept of judgement which Kant elaborates in the *Third Critique*, is a transcendental faculty of 'reflection' which refers the contingency of theoretical explanations to a higher, although unknowable, unity in the manifold of particular appearances. The aesthetic and teleological judgements expounded in the *Third Critique*, are both reflective moments which presuppose the 'determining intelligence' of God as the condition of this unity. Attributions of beauty or finality to nature in other words, take their transcendental necessity from the critical demand that cognitions must be completely determined by their *a priori* conditions: reflective judgements unify these cognitions as they are contingently presented through determinate judgements of the understanding (*Verstande*). The 'gulf' between the cognitions of practical and theoretical reason is bridged by the *a priori* 'faculty' of regarding nature as in conformity with the ends of autonomous intelligence.

It is the project of the *Third Critique* therefore, which reveals the actuality of the self-consciousness determined in the critical philosophy. The faculties of Kant's transcendental subject are constitutive of cognitive knowledge: they determine *a priori* conditions which are not of themselves reflective or self-aware.

We cannot conceive ... the finality that must be introduced as the basis of even our knowledge of the ... possibility of many

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natural things, except by representing it ... as the product of an intelligent cause.... [*Critique of Teleological Judgement*, 53]

These faculties do not 'think' themselves in relation to the 'otherness' they presuppose and constantly redetermine: they are simply the formal conditions through which that 'otherness' is presented (i.e. in the autonomous realms of rational self-determination and heteronomous causality). Kant's concept of reflective judgement therefore, discloses the abstract heterogeneity of practical and theoretical faculties which determine two autonomous and exclusive realms of cognition. The categorical imperative commands the will unconditionally; while judgements of the understanding determine the heteronomous causality of phenomena. Both these realms of legislation constitute subjectivity as a form beyond concrete mediation: the 'transcendental unity' which underlies determinate judgements of experience, is itself uncognizable; while the 'noumenal causality' of the will is distinguished categorically from cognitive representations,

the concept of nature represents its objects as mere phenomena, whereas the concept of freedom presents in its object what is no doubt a thing in itself, but does not make it intuitable, and further that neither one is capable therefore, of furnishing theoretical cognition of its Object (or even the thinking Subject) as a thing-in-itself. [*Critique of Judgement*, 13]

The juridical reading of Kant's transcendental subject which Lyotard expounds in *The Differend*, fails to recognize the formal exclusivity of the faculties which determine its experience. The idea of an inner 'litigation' of faculties in which each criticizes the other through 'confrontation of their respective objects'<sup>12</sup>, posits a relatedness which Kant's exposition of practical and theoretical reason excludes. The idea of reflective judgement presupposes 'the one-sidedness of subjectivity and the one-sidedness of objectivity'<sup>13</sup>: Kant's aesthetic and teleological mediations remain subjective precisely because phenomenal cognition excludes the possibility of re-cognizing substantive difference. Lyotard's transcription of transcendental subjectivity therefore, imposes its juridical structure on the abstract legislations of practical and theoretical reason: each is presented as knowing the object of the other.<sup>14</sup> It is

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the critical philosophy's very failure to expound the objectivity of this relatedness, which constitutes the substance of Hegel's critique of Kant. The opposition of theoretical reason to practical self-determination, is what underlies the aporias of moral consciousness.<sup>15</sup> For Lyotard however, this mediation is infinitely deferred within the subject: its failure to occur is determined with the genre ('cognition') which seeks to 'exclude' the absolute heterogeneity of the event.

The discrete faculties which Kant attempts to expound within the cognitive genre, are presented in *The Differend* as forms which infinitely redetermine their negative self-identity. Each discrete moment of cognitive representation is aware of itself as related to an object to which it is opposed. It is this infinite redetermination of otherness which, for Lyotard, constitutes the critical philosophy's disclosure of the heterogeneity and contingency of the phrase. The object of each form of representation (moral, aesthetic, teleological or theoretical), always invokes a judgement of legitimacy which, on Lyotard's reading cannot be contained within the structure of cognition. The phrase, in other words, cannot be reduced to the metalanguage of subjective faculties: each moment of representation is a 'presentation' which spontaneously necessitates judgement of difference. This conception of transcendental subjectivity as both disclosing and suppressing the spontaneous reception of difference, is a misrepresentation of its abstractness. The 'metaphysical' unity of the transcendental subject, which Lyotard understands as an imposition on the spontaneous presentation of the phrase, is without substance or actuality: the Kantian self-consciousness is originally split into antagonistic forms which are constantly reproduced by its activity. It is this formal separation and difference which is presupposed and reinforced throughout *The Differend's* ethical and political problematics.

Lyotard's concern with the *First Critique*, is focussed on Kant's exposition of the relationship between 'form' and 'substance' of intuition set out in the Transcendental Aesthetic. For it is at this point that the differend between

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transcendentally legislative faculties, and the heterogeneity which these faculties determine cognitively, is disclosed in an attempt to contain the manifold sensory affections (pure immediacy) within the modes of intuition. On Lyotard's reading, the 'negotiation' of the event which is presupposed by Kant's juridical organization of cognitions, is made through the *First Critique's* account of sensible intuition: the 'otherness' of 'matter' is exteriorized and 'forgotten' through the formative moments of spatial and temporal extension. For Lyotard, it is only through this original neutralization of the event, that transcendental subjectivity is able to suppress the immediacy of the phrase within a structure of (juridical) litigations.

In the 'Transcendental Aesthetic', Kant attempts to establish that all possible objects of theoretical understanding, are constituted through determinate judgements which conjoin intuitions and concepts,

The capacity (receptivity) for receiving representations through the mode in which we are affected by objects, is entitled sensibility. Objects are given to us by means of sensibility; and it alone yields us intuitions; they are thought through the understanding, and from the understanding arise concepts. But all thought must, directly or indirectly, by way of certain characters, relate ultimately to intuitions, and therefore, with us, to sensibility, because in no other way can an object be given to us. [*Critique of Pure Reason*, 65]

Concepts without intuitions are empty analytic unities; while intuitions without concepts present only disarticulated impressions. Lyotard's reading of Kant's idea of sensory affection however, presents the 'givenness', or 'matter', which precedes representation in space and time, as an 'idiom' which cannot be transcendently phrased. Thus, the activity of the 'Transcendental Aesthetic' is a negotiation of immediacy: it is the critical subject's original act of conjoining which brings together the two irreducibly heterogeneous 'idioms' of affection and intuition,

this passage apparatus [*Darstellung*] has already occurred in the Transcendental Aesthetic: the faculty of receiving sensible impressions is 'bridged' with the faculty of coordinating and objectifying them in the forms of space and time. [*The Differend*, 'Kant Notice', 62]



This activity of the Kantian subject (*Darstellung*<sup>2</sup>, or the conjunction/representation of the objects of heterogeneous faculties) excludes the immediacy of the phrase event which, for Lyotard, is the locus of absolute contingency (the spontaneity of 'linkage'). The judgements of Kant's transcendental subjectivity are presented in *The Differend* as 'situating' the objects of discrete faculties within the genre of cognition,

the doubling or redoubling that already affects sensibility [in the Transcendental Aesthetic] indicates that the subject cannot have presentations, but only representations... in the juridical sense where the faculties keep making representations, remonstrances or grievances to each other through the confrontation of their respective objects. [*The Differend*, 62.]

It is only by attributing discrete awareness to the faculties of the transcendental subject, that Lyotard is able to render its experience of objects in space and time, as experience (feeling, emotion) of the differend between the idioms of 'form' and 'matter' of intuition.<sup>16</sup> Kant's negotiation of the 'givenness' of affections therefore, is presented as a particular disposition of activity and passivity ('addressor' and 'addressee') between the intuitive faculties, or 'phrasings' of the transcendental subject; a disposition which cannot suppress the experience of contingency and heterogeneity presented idiom of 'matter'. Critical philosophy's acknowledgement of an empirical, intuitive element in the constitution of phenomenal experience, in other words, is construed by Lyotard as disclosing the complete contingency of linkage onto the 'current phrase',

The superimposing of the form phrase, that of the active subject, the addressor, on to the matter phrase, in whose universe the subject is addressee, transcendental idealism comes to cover over empirical realism. It does not suppress it. This is why the [phenomenological, cognitive] covering becomes unstable. [*The Differend*, 63]

The transcendental subjectivity which Kant adduces as the condition of phenomenal experience, cannot be reduced to the 'litigation' of discrete, self-conscious faculties. I will argue that the truth of its 'representations' (of experience, autonomy and judgement) is re-cognizable only through their relation to the objective historical forms (of work, satisfaction, desire and otherness) which they reflect and reinforce.



Speculatively understood, the 'Transcendental Aesthetic', by its specification of the spatial and temporal immediacy of the object, determines consciousness' most abstract moment of awareness: the 'I' of pure, abstract immediacy. The development of this consciousness, which Hegel sets out in the forms of 'Sense-certainty', 'Perception', and the inverting activity of the 'Understanding' (Verstande), presents the critical subject through a speculative exposition of abstract otherness, in which consciousness always lacks concrete self-recognition. None of the subject-object relations which are specified in the *Phenomenology* as determining 'consciousness', are capable of determining concrete self-awareness. Lyotard's 'juridical' conception of transcendental faculties therefore, fails to recognize that the phenomenal experience of the critical subject is part of a phenomenology (historical determination) of objective self-recognition.<sup>17</sup>

Both Lyotard and Hegel develop their respective readings of Kant's philosophy from critiques of the relationship of sensory affection to the understanding presented in the 'Transcendental Aesthetic'. For Lyotard, Kant's concepts of space and time as modes of intuition, represents an original 'negotiation of the event'<sup>18</sup> through the cognitive activity of a transcendental subject. The formation of disarticulated affections into phenomenal experience, is presented as the moment at which the subject confronts the immediacy of the occurrence, but confronts it only as the emotion of loss. The being of the phenomenon is produced through the exteriorization and forgetting of the unrepresentability of the pure immediate. Yet for Lyotard, this forgetting cannot be without affect on transcendental subjectivity: it is originally aware that it is only within the genre of cognitive representation that the deictic 'idiom' is necessary.

The subject knows its idiom, space time, can only accord referential value to a phrase uttered in this idiom... this is why sensation is made a feeling, that is, a phrase awaiting its expression, a silence treated with emotion. [*The Differend*, 63]

This reading of the *First Critique* foreshadows the ethical reception of

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difference which is developed in *The Differend's* 'notices' on the *Second* and *Third Critiques*, and in his essay *Heidegger and "the jews"*.<sup>19</sup> Lyotard's understanding of the critical philosophy, presents the Kantian subject as related to a contingency whose (spatio-temporal) exclusion is experienced as a 'loss'. The possibility of being ethically obligated therefore, cannot be represented in conceptual thought: it is the immediate sensitivity of thinking to the otherness which is co-present with the forms and categories of representation.<sup>20</sup> The reading of sensible intuition through which Lyotard presents the experience of loss however, fails to recognize the critique of abstract cognition which Hegel develops in the *Phenomenology*. The possibility of a spontaneous reception of difference, cannot be conceived as affectively (emotionally) presented in the experience of the critical subject. For it is only through the objective formation of ethical life necessitated by the negativity of abstract understanding<sup>21</sup>, that the actual significance of the subjective particular is recognizable. The relationship between difference and spontaneity, must be conceived in terms of the historical forms through which the subject misrecognizes itself.

The dialectic of the understanding gives an account of the concept of 'force' as an idea produced through a series of 'reflective' determinations, whose lack of substantial identity finds its explicitude in Kant's separation of truth and experience.<sup>22</sup> The concept of force through which the understanding attempts to determine its object, is split into that which 'has already expressed and externalized itself'<sup>23</sup> in the differentiated forms of which it is the medium, and the undifferentiated 'oneness' which exists outside of this essential determination of its being. The exteriority of this oneness to the determination of force as an object of knowledge, constitutes a contradiction through which this abstract side of the relation is 'incited' to sublimate itself into the moments in which it is manifest. The distinction between the two moments, abstract oneness, and the differentiated elements through which force actually reveals itself as a universal medium therefore, proves to be unsustainable. for the production of the particular events in which force is understood as the

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universal medium, occurs both where this production is the 'incited' expression of force as 'oneness', or 'negative unity', and where this unity is external to the medium itself, merely 'inciting' its efficiency. Neither of the terms through which force becomes knowledge, in other words, has an actual priority; each is a necessary determination of the other. The truth of these two moments of 'inciting' and 'incited' force 'is simply in each being solely through the other, and each ceasing *eo ipso* to be what it is through the other'.<sup>24</sup>

Consciousness, as the abstract universality of understanding (*Verstande*), has become aware of itself as the realization of force (the two vanishing moments of incitement) which it had taken to be an external reality. The abstract inwardness in which the diverse moments of expression are 'superseded', becomes fixed in the 'notion' of force (*qua* notion), while the 'medium' of these expressions becomes fixed in 'force as substance'. These two moments however, do not remain abstract and indifferent to each other; consciousness posits the plurality of sensuous determinations as merely negative 'appearances' incapable of articulating the true (noumenal) nature of reality. The truth immanent in appearances however, is that they are the manifestation of the 'notion' (abstract unity) and 'substance' (the 'medium of diversity) of force to consciousness. These two moments, through which force has been constituted as an object of knowledge, are actually reciprocal determinations; each is either the 'universal medium' or 'negative unity' by which the being of force is sustained. The understanding, having separated these reciprocal moments into the abstract forms of noumena (the inverted world) and phenomena, becomes the point of mediation between them: what appears to it is recognized as an appearance of the 'inner world', whose content is the relation of what is actually existent to a determinate essence.

It is through the dialectic of the understanding therefore, that the necessity of substantive self-recognition is constituted. By the conclusion of its appearance as 'consciousness', the unity of subjective knowing has the same internal structure as the experience it determines: it is an infinite process of

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reciprocally sustained and vanishing forms. This inwardly related diversity is the moment at which formal self-consciousness emerges; for it is here that the identity of the 'I' has become a circuit of self-attraction and repulsion of distinct, but intrinsically related elements. The objectivity which emerges from Hegel's dialectic of inversion therefore, is no longer abstractly differentiated and opposed; it is the process of 'life', in which pure flux (the 'medium' of diversity) and simple self-identity ('notion) are present as mediated elements.

The impossibility of determining knowledge as pure 'sense-immediacy', institutes the historical development of consciousness through misrecognition of actuality. Within the dialectic of consciousness itself this actuality proceeds through the epistemological presuppositions of empiricism and perception, towards the abstractly cognitive understanding of Kant's critical subject. This latter form of phenomenal 'cognition' produces the moment of self-consciousness as such; for it is the understandings' separation of truth and appearance which produces consciousness' confirmation of itself in the objectivity it determines. Thus, the truth of self-consciousness, i.e. confirmation of independent selfhood in the other, proceeds from this formal self-recognition; for the dialectic of 'life', through which this intersubjective confirmation becomes necessary, expounds the transitions of consciousness from an abstract identity in difference (the process of reciprocally sustained and vanishing forms) to desire and negation. Both the intuitive and discursive moments of phenomenal experience therefore, are shown in the *Phenomenology* as inadequate to produce a substantive self-awareness: the speculative significance of Kant's critical faculties is their ultimate determination of consciousness' actual negativity.

Lyotard's reading of the *First Critique* as a cognitive determination (suppression) of the 'givenness' of the phrase, fails to recognize that it is the absence of concrete self-awareness constituted in the relations of phenomenal experience, which is the truth of the Kantian subject. Speculatively understood, the discursive and intuitive faculties posited in the critical philosophy, exclude



substantive self-recognition; for it is through the aporetic structure of phenomenal experience that the actuality of the self, its desire, work and satisfaction, is historically determined. Lyotard's attribution of discrete self-awareness to Kant's cognitive faculties, constitutes critical epistemology as an hermetic system of 'litigations'. This 'juridical' conception of the critical subject presupposes an identity of self-consciousness with each of that subject's constitutive activities; the immediate occurrence of each 'critical' phrase is posited as the necessity of an inner litigation which ruptures the unity of 'representation'. Thus, it is only by abstracting the faculties of the Kantian subject from their actual determination of self-consciousness, that is, the lack of unity in its experience, that Lyotard is able to present the *First Critique* as a suppression of the absolute contingency of linkage onto the occurrence.

Within the development set out in the *Phenomenology*, it is the pure negativity of consciousness which emerges from the speculative determination of phenomenal experience, that produces self-consciousness as such. For it is only where the desire of this negatively independent consciousness is objectified in the being of the other, that its self-awareness is confirmed:

convinced of the nothingness of the other, it [self-consciousness] definitely affirms this nothingness to be for itself the truth of the other, negates the independent object, and thereby acquires the certainty of its own self, as a true certainty, a certainty which it has become aware of in objective form.  
[*Phenomenology*, 225]

The forms of master and slave embody the victory of the desire for recognition over the desire for life; they represent the cessation of universal war through absolute self-conviction. This original moment of domination (of the master over the slave) is the moment through which the actuality (intersubjectivity) of self-consciousness comes into being. It carries with it no articulate recognition of universal subjectivity; for the slave submits to the master only because he does not want to die, and not because he recognizes his future position of servitude as a necessary moment in the development of self-consciousness.

Thus what is constituted through the forms of master and slave, are the

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conditions necessary to the development of self-consciousness through concrete forms of misrecognition. In the *Phenomenology's* account of intersubjectivity, the desire of generically negative consciousness for confirmation of its independence, achieves satisfaction in the form of the master.<sup>25</sup> His domination results from the capitulation of the other in the struggle for recognition; it is fear of death which commits the slave to his slavery. To the master, in other words, the slave is objectified in its dependence upon his will; he has assumed absolute power over the slave, the whole of whose activity is the cancellation of its independence.

The master-slave relation is the point at which self-awareness ceases to be the atomistic form determined through critical faculties, or the generic negativity expounded in the dialectic of life and desire. What emerges from the struggle for recognition is the division of consciousness into the discrete forms, the being-in-and-for-itself of the master, and the being-for-another for the slave, whose intersubjectivity, or concrete 'knowing', is the objective form of domination. The master recognizes himself only in the abstract volition of negative independence (his domination of the slave and consumption of the objects created for him); while the slave originally knows only the fear of death and absolute obligation to the master. Thus, the essentiality which the master takes himself to be, even though it has objective confirmation in the slave, is still only the self-assurance of negativity which has resulted from deliberately risking life.

The significance of this relationship to a speculative understanding of Lyotard's idea of presentation is that it establishes the necessity of thought's relation to actuality without presupposing any positive recognition of universal selfhood. What is described by Hegel in the transition from 'consciousness' to 'self-consciousness', is the emergence of the conditions through which misrecognition of freedom and independence is possible.

Self-consciousness exists in itself and for itself, in that it exists for another self-consciousness; that is to say, it is only by being acknowledged, or 'recognized'... This double meaning of what is distinguished lies in the nature of self-consciousness: of its

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being infinite, or directly the opposite of the determinateness in which it is fixed. The detailed exposition of this spiritual unity in its duplication will bring before us the process of recognition. [*Phenomenology of Mind*, 229]

The *Phenomenology's* account of the development of self-consciousness does not demonstrate the operation of universal selfhood, but show that the actuality of negative desire necessitates the emergence of objective forms of misrecognition. Lyotard's argument for the ontological primacy of phrasing therefore, fails to recognize the historical necessity of the forms through which concrete, ethical thinking develops. His claim that it is the immediacy of 'presentation' which cannot be doubted, and which is the irreducible necessity of differends and ethical phrasing, rests upon the abstraction of subjectivity from the concrete forms in which it misrecognizes and misrepresents its activity.

Lyotard's conception of the dispersal of 'being' throughout heterogeneous 'genres', fails to recognize that 'cognition' can be adequately determined only through the ethical forms which self-consciousness substantiates in its actuality. Hegel's exposition of Kantian epistemology, by showing that the absolute severance of phenomena and noumena as positing consciousness as simply self-identity, demonstrates the necessity of concrete self-recognition. The abstract relations of 'sense immediacy', 'perception' and 'understanding', produce a subjective form in which objectivity is opposed to conceptual recognition; a form which is originally set against the 'otherness' in which its negativity must find satisfaction and (objective) confirmation. The account of the transcendental subject which is set out in *The Differend's* 'notices' on Kant, fails to recognize first, that intuition does not contribute to the cognitive unity of the subject (it merely dominates the activity of the understanding); and secondly, that the immediately 'ethical' reception of difference, is itself a (contradictory) moment of misrecognition which occurs within the historical development of *Sittlichkeit*. My concern in the rest of this chapter, is to develop the relationship between the speculative aporias constituted through Kant's account of experience, and Lyotard's attempt to expound the ethical and political significance of the phrase.

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Hegel's reading of the critical philosophy is concerned, even in its earliest, non-phenomenological forms, to determine the abstract reductivism entailed in transcendental arguments. In his early essay on 'empirical' (contractarian) and 'idealist' theories of natural law<sup>27</sup>, he attempts to show that both Kantian and Fichtean conceptions of the moral will, determine a notion of 'law' which reinforces the inequalities of actual social relations. The 'morality' of abstract idealism, in other words, is presented by Hegel as actually presupposing the utilitarian motivations posited by 'empirical' conceptions of an anti-social 'human nature'; that is, as taking its 'content' from the external relations constituted in the 'system of reality.'

The natural law essay begins with an analysis of the method of empirical abstraction by which 'state of nature' theorists attempt to ground the content of natural law. By abstracting 'human nature' from the actual determinations through which consciousness develops towards self-recognition, this method produces a concept of the irreducibly human in which only the determinations of pure individuality (the being of the ahistorical ego) can appear. The unity of society, in other words, is explained in terms of 'natural laws' whose necessity derives from the ineradicable threat of return to the chaos of unrestrained individualism,

What is seen [by the empiricists] to be connected with the state must therefore also be abstracted {from human nature} because the chaotic of the necessary cannot contain absolute unity but only simple multiplicity... and so what can fall under the concept of linking and ordering of these, the weakest unity of which the principle of multiplicity is capable, is therefore excluded as something that only comes later and is added onto that multiplicity. [*Natural Law*, 64]

This 'empirical' method of the contractarians' attempts to reduce human nature to fundamental powers and capacities originating in physical existence. This is the putative ground of the ethical and political problematic which contractarian theories of the state attempt to work through. The natural law essay however, argues that the project of trying to found the determinations of ethical

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recognition upon the hypothetical proposition of an irreducibly atomistic 'nature,' turns out to be empirical in a way that its method supposedly excludes. For by positing this 'nature' as causally efficient upon volition, natural law is determined as a necessity which follows simply from the 'fact' that 'rational' consciousness actively seeks its own continuation, and must therefore choose ethical life over natural existence. Yet, as has been shown in the more developed arguments of the *Phenomenology*, even the most abstract principle of ethical life (i.e. the assent to domination through the fear of death described in the struggle for recognition) cannot be accounted for in terms of external causality. For it is not until consciousness is established in which notions of self-determination and self-interest have their being and significance.

Speculatively understood therefore, the concept of human nature offered by empirical theories of natural law, is a contradiction: it appears both as the contemporary threat which is the ground of political power and authority; and as the original precipitating cause of the natural law which determines ethical life. It is this double determination of an identical (human) nature as both progenitor and potential destroyer of the state, which for Hegel constitutes the basic contradiction at the root of contractarian thought. Ethical relations, in other words, are determined by a fundamentally anti-social 'nature', which makes the contingency and indeterminacy of self-seeking the essence of moral and political authority.

'Idealist' discourse on the science of rights (specifically that of Kant and Fichte) is presented by Hegel in the essay on natural law, as compounding the lack of unity which contractarian theories posit as the basis of the state. By treating civil association as the result of a pre-social (*a priori*) recognition of the self-interest actually constituted (*a posteriori*) in the system of needs, these empirical theories of natural law make the sphere of political legitimacy coincident with constraint upon an anti-social human nature. Hegel's contention is that the contractarian idea of a perpetually self-seeking will is actually the

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reflection of inequality that exists (unacknowledged) in the system of needs; and that it is this inequality which determines the content of idealist natural law.

Kant's critical ethics attempts to found the necessity of moral ends upon an individual whose *a priori* determining ground is simply 'the form of lawfulness in general'. His claim is that the form of the categorical imperative, is such as to command unconditionally the obedience of rational subjectivity to its own objective law. The cognition given through the concepts of practical reason, are independent of the understanding's determination of phenomenal experience: the autonomy of the Kantian subject is thought as categorically distinct from the heteronomous causality. Thus, the legislative 'realms' of critical philosophy constitute two separate, abstract relations of reason to its objects: practical reason, as the absolute unity of the categorical imperative, is radically opposed to nature; while theoretical reason remains relative to the multiplicity of particular appearances. Both practical and theoretical judgements presuppose an abstract relationship of 'unity' to 'multiplicity', which cannot form the basis of an ethical relation of identity.<sup>28</sup>

This lack of unity is reproduced in idealist theories of natural law. The ethical relations presented by Kant and Fichte are shown by Hegel to presuppose the same relative (*a posteriori*) determinations posited by the contractarians as the original ground of the state. The system of needs (the sphere of work, enjoyment and possession), in other words, is the presupposition of a moral autonomy which posits the individual as an atomistic unit externally related to the multiplicity of other (working, desiring and possessing) individuals. Bourgeois property law therefore, is the reflection of this 'relative ethical life' in which the determinations of the system of needs appear both as the unifying principle of the totality, and as determining the separateness (lack of identity) upon which 'moral' agency depends.

Critical ethics posits an exteriority of freedom (autonomy) and nature

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(heteronomy) which reproduces the lack of identity present in the system of needs. The 'content' determined through the moral law is socially conditioned; it is the reflection of actual social relations and their inequalities, rather than the asocial, ahistorical activity of pure will.

Lyotard's reading of Kant's *First Critique* maintains that it is a metaphysical 'negotiation' of the contingency of events. This understanding of Kant's epistemology however, presupposes an identity of the presentation immediately determined by the phrase, and an awareness of that presentation as 'situated' within a particular generic litigation, that of 'cognition'. The Kantian subject is conceived by Lyotard as a 'juridical' relation of self-conscious faculties, which is originally constituted by its exclusion of the contingency of presentation. It is this attribution of reflective self-awareness to the faculties of cognition, which excludes recognition of the abstract difference presupposed by critical philosophy. Hegel's natural law essay expounds the Kantian moral will as a reflection of the utilitarian determinations (work, desire, possession) of subjective particularity: the rational spontaneity of practical cognitions is determined by the 'caprice and physical necessity'<sup>29</sup> which conditions consciousness' abstract particularity. Presentation of heterogeneity and contingency to the transcendental subject is constituted through its reflection of actual social relations; the representation of 'heteronomy' (the non-ethical) is constituted in ethical life,

This is the reflex which morality in the usual meaning, would more or less fit the formal positing, in mutual indifference, of the specific terms of the relation i.e. the ethical life of the bourgeois or private individual for whom the difference of relations is fixed and who depends on them and in them.[*Natural Law*, 114]

This abstract separation and self-seeking, constitute the immediate determinations through which acknowledgement of universality will take place; although, as the natural law essay specifies, the self-recognition of the Kantian subject is ultimately a reflection of the lack of identity actually present in civil society. Moral consciousness is speculatively conceived through its inability to

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constitute a substantive ethical relation; the subjective difference, or natural inequality of utilitarian determinations, which it justifies, constitute the real contingency it is incapable of mediating ('negotiating'). The critical subject's ethical reception of difference presupposes the absence of unity constituted by phenomenal experience: it is heteronomy through which 'otherness' emerges for the transcendental subject, not the immediate contingency of the phrase.

The contingency and heterogeneity which the Kantian subject is unable to mediate, is the abstract self-subsistence of individuals in civil society. The law within which this 'formal' freedom is positively determined, exists only as a 'posited' legitimation of the real inequalities determined by bourgeois property relations; its concept is the abstract domination of ethical unity,

Their association [i.e. individuals in civil society] is brought about by their needs, by the legal system [the means to security of person and property] and by an external organization for attaining their particular common interest. [*Philosophy of Right*, section 157]

The cognitions of practical reason represent 'heteronomy' as distinct from the legitimacy of formal property law: the opposition of autonomy and nature through which the moral activity of the subject is determined, legitimizes the inequality and domination which it presupposes. Lyotard's conception of critical subjectivity as conjoining heterogeneous representations, fails to recognize this presupposition of abstract difference. By transcribing the Kantian subject as a 'juridical' relation of discrete faculties, Lyotard reinforces the abstract relation of subjectivity to the work, satisfaction and desire through which self-recognition develops. The immediate exteriority of each constitutive (*a priori*) function, which is posited in *The Differend's* account of the transcendental subject, is the precondition of Lyotard's reading of the sublime: the 'incommensurability' which produces 'litigations' within the subject, cannot be contained within the genre of cognition, and so must be 'presented' through the spontaneous originality of phrasing. The ethical and political judgements whose necessity Lyotard expounds in his reading of the 'Analytic of The Sublime', presupposes the lack of unity inherent in the critical subject as the

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contingency of presentation which always springs from representation. Speculatively understood however, this lack of unity participates in the aporetic relations in which the other remains alien to, and estranged from, subjectivity: the abstract difference represented through the *a priori* categories of the understanding, is reflected in the moral law's reinforcement of abstract particularity and self-seeking.

For Hegel, the substance, or being of ethical life, must encompass the external ('reflective') relations constituted in civil society; it must mediate self-seeking individualities within a relation which dominates neither concept nor intuition. This relation is the essence of the ethical; it is the transparency of social institutions through which self-conscious individuals are aware of their substantial freedom which cannot be determined through 'idealist' conceptions of rational autonomy; for the phenomenology of legal forms set out in the *Philosophy of Right*, shows that moral spontaneity, in both its Kantian and Fichtean forms, merely reinforces the externality and contingency constituted in civil society. The substance of *Sittlichkeit* therefore, is realized in the mediated totality of social institutions through which self-consciousness recognizes itself,

The state is the actuality of the ethical idea. it is the ethical mind qua the substantial will manifest and revealed to itself, knowing and thinking itself, accomplishing what it knows in so far as it knows it. [*Philosophy of Right*, ¶257]

The relation of ethical mediacy described by Hegel in the *Philosophy of Right* however, is not a posited 'absolute'. His phenomenology of abstract legal forms is itself abstract in the sense of lacking an account of the 'subjective dispositions' determined within a society based upon bourgeois property law. The actuality of ethical mediations, in other words, must encompass the totality of formative institutions; it must be a law in which self-consciousness' abstract particularity is cognized and 're-cognized'. Thus, Lyotard's claim that Hegel's conception of ethical life attempts to put an end to historical time<sup>31</sup>, and that Kant's conception of *Darstellung* ('conjunction') is more faithful to the problem of contingency<sup>32</sup>, is conditioned by his misrepresentation of speculative

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phenomenology. By failing to recognize that the concept of absolute ethical life must mediate the totality of self-consciousness' objective formations, Lyotard simply posits the (speculative) ethical relation as the final denial of contingency by universal subjectivity,

The great story of history has its end in the extinction of names (particularisms). At the end of the great story, there will simply be humanity. The names humanity has taken will turn out to be superfluous, at least they will have designated certain stations along the way of the cross. [*The Differend*, ¶221]

This positing of (self-consciousness') speculative development as a 'pure teleology' which leads to the domination of 'thinking' by the law of the state, ignores the fact that Hegel's critique of Kant in the *Philosophy of Right*, is a critique of positing. The law of ethical life is a law in which the domination inherent in the abstract unity of practical reason is recognized; it is specifically, the critique of the 'reflective' unity found in bourgeois property relations,

This external state [i.e. civil society] is brought back to and welded into unity in the Constitution of the State which is the end and actuality of both the substantial universal order and the public life devoted thereto. [*Philosophy of Right*, ¶157]

Hegel's concept of absolute ethical life is the explicit recognition of the finitude of self-consciousness; it is the speculative determination of the necessity inherent in all its contingent forms. The law of the notion does not constitute the utter domination of contingency; it is both the form and content in which (abstract) contingency is realized,

It is only in its Notion that [the object] is in its *truth*, whereas in the immediacy in which it is given it is only *appearance* and *contingency*; that the cognition that truly comprehends the object is the cognition of it as it is *in and for itself*, and that the Notion is its very objectivity. [*Science of Logic*, 590]

The exteriority of object and notion which is presented in the critical philosophy, constitutes abstract 'realms' of knowing and willing (theoretical and practical reason), neither of which can determine the substance of the subjectivity it posits. The truth of abstract practical reason is the loss of objectivity; for by taking its self-knowledge to be absolute cognition of the ethical, moral consciousness excludes all the actual determinations of its

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purpose and activity. The morally spontaneous will, in other words, has no ethical 'character' determined by an intuitive relation to the whole; it is the pure, or 'formal', conception of 'duty', through which the heterogeneity and contingency of the subjective particular is sustained.

The true ethical life (*Sittlichkeit*) of the community therefore, cannot be expressed in the formal, legalistic determinations of abstract autonomy. The content of the ethical is determined only through a 're-cognition' in which the 'concept' of unity has ceased to be an abstract domination of the mediatedness of the totality. Ethical recognition, in other words, must be actualized in all the (objective) institutional forms of the whole; it must be the equality of 'intuition' (content, immediacy) and 'concept' (universality, cognition),

In custom, it [the ethical spirit] has its immediate existence and in the self-consciousness of the individual, in his being and activity, it has its mediated existence just as the individual through his conviction of the state as the essence, goal and the product of his activity, has his substantial freedom. [*Philosophy of Right*, ¶257]

The concept of ethical recognition expounded in the *Philosophy of Right* therefore, is articulated through a discourse of positing which is grounded in the aporias of the *Phenomenology*: the abstract, legalistic categories through which Hegel expounds the mediation of difference in the *Rechtstaat*, have already been traversed in the development of natural consciousness. The law of ethical life must be grounded in the speculative development of subjectivity through its abstract forms; for it is only through this development that positedness and abstraction as such, are recognized as absolutely mediated. Absolute knowing is presupposed in the *Philosophy of Right*, only as the possibility of re-cognizing the aporias through which it is actualized: the labour of the concept does not finish in the *Rechtstaat*; rather it is the judgement of its own finitude.

The phenomenological development of consciousness cannot be abstracted from the actuality of the state (ethical life, *Sittlichkeit*); for it is only through spirit's recognition of itself as 'being', not simply as 'having' reason, that it is



possible for self-conscious individuals to recognize their essential mediatedness. The concept of the State, in other words, is absolute mediation of objective particularity; it is the form in which the abstract contingent determinations of self-consciousness' work, desire and satisfaction are actualized. Thus, Hegel's exposition of the state in the *Philosophy of Right*, determines its concept as the moment of absolute mediation which brings 'reflective' self-seeking back to its actual, ethical determination,

The external state is brought back to ...unity in the Constitution of the State which is the end and actuality of both substantial universal order and the public life devoted thereto. [*Philosophy of Right*, ¶157]

This account of the relationship of subjective particularity to the concrete universal, presupposes ideas of state and civil society as discrete, abstractly differentiated forms; it assumes, in other words, the historical development of self-consciousness to the point at which it recognizes its unity (universal dependency) through its particular needs,

the interest of the idea... lies in the process whereby singularity [is] raised [through 'natural' and 'arbitrary' needs] ...to the formal freedom and universality of knowing and willing- the process whereby particularity is educated up to subjectivity [*Philosophy of Right*, ¶187]

Hegel's assumption of this reflectively self-determining particular however, is made within the context of an exposition which is restricted to determining the relationship of the state to the bourgeois property form. The phenomenology of ethical and political life laid out in the *Philosophy of Right*, is concerned to show how the abstract rights of formally autonomous individuals, legitimate the domination and inequality constituted in civil society. By accounting for the presuppositions of reflective self-seeking, the *Philosophy of Right* grounds the work, satisfaction and desire constituted in ethical life, in the historical development of self-consciousness: the idea of the state is the fulfilment of a particularity which has evolved through its abstract relations to the universal.

It is the phenomenological development of spirit therefore, which is the condition of the *Philosophy of Right's* account of the state. The subjective



particular whose abstract separation and difference is expounded in Hegel's account of civil society, has passed through the historical determinations of Consciousness, Self-consciousness and Reason; it recognizes itself as the 'concrete person who is himself the object of his particular aims'.<sup>33</sup> This misrecognition of ethical substance is a necessary part of self-consciousness' ethical mediation; for the contingency of subjective determination which the *Phenomenology* expounds as externally constituting the universal ('Self-contained individuals associated as a community of animals'), is retraversed in Spirit as the destructive idealism of the French Revolution. Thus, the truth of the state emerges through its relationship to the subjective particular; for it is the form which must ultimately give substance to self-consciousness. Its concept is implicitly present throughout the *Phenomenology*: for it is the actuality which abstract reason cannot realize in the 'spiritual animal kingdom', and which the pure subjectivization of spirit (the 'terror' of absolute freedom) can only destroy and pervert.

In the 'Result' section of *The Differend*, Lyotard remarks that,

the question 'Auschwitz?' is also the question [of] 'after Auschwitz?'. The unchaining of death, the utmost obligation, from what legitimates it after the crime; scepticism and nihilism have every reason to feed off this endlessly. For it is not true, as Hegel believes, that afterwards it still remains for us to digest ... the extermination of the determined we. [*The Differend*, ¶157]

Auschwitz, in other words, is understood by Lyotard as disclosing the responsibility of thought to its own spontaneously originaive power; a power whose ethical and political significance *The Differend* attempts to expound through the transcriptions of Kant's *Third Critique* and his political essays. The evil perpetrated at the Nazi death camps, is for Lyotard absolutely unsubstatable. In order to attest to the enormity of the Nazi crime, thinking must become sensitive to its infinitude: it must phrase the absolute victimization of the other which the Nazi mythology enshrined in the law; and must reject even 'negative' dialectics<sup>34</sup>, in which the critique of representational categories is reified as an end in itself. The 'experience' (of unrepresentability)



which Lyotard attempts to abstract from Kant's notion of aesthetic finality, has 'Auschwitz' as its sign: nothing cognitive or conceptual is adequate to express the event of the Nazi slaughter. For Lyotard, it is the absence of this radical evil from every testament and articulation, the fact that it can never 'arrive' complete in its categorical form, that constantly re-originates the necessity to phrase and to judge,

the waiting also traverses what arrives, as it were, mostly that which has not yet arrived. [*Heidegger and "the jews"*, 40]

'Auschwitz' is presented in *The Differend* as a 'Factum'<sup>35</sup> which obligates the spontaneity of thought to judge the otherness co-presented with representational categories. 'After Auschwitz' the (metaphysical) 'we' through which speculative phenomenology 'represents' the historical necessity of ethical life (*Sittlichkeit*), is dispersed: for Lyotard, nothing is necessary apart from the contingency of presentation and obligation to phrase the differends which occur among heterogeneous genres.

The ethical significance of Lyotard's idea of the phrase, is dependent upon his conception of Auschwitz as the end of speculative mediation. The critique of speculative phenomenology which is set out in *The Differend*, expounds the historical event of the holocaust as the ethical disclosure of the sublime: the 'experience' of unrepresentability and otherness is irreducibly disclosed as the necessity of judging in the absence of predetermined concepts and categories. This spontaneity of thought in relation to its 'incarnations'<sup>36</sup> however, cannot be conceived in absolute abstraction from the speculative development of self-consciousness. As I have shown in chapter one, the event of 'Auschwitz' can only be judged ethically through the distortions and deformations of *Sittlichkeit* produced by the 'culture' of Nazism. The substance of the state is destroyed by a violently re-formative subjectivity which can find no satisfaction in the elements of *Sittlichkeit*: ethical judgement re-cognizes the actual conditions of spirit's violence against itself. Lyotard's conception of the originative power of phrasing therefore, fails to recognize Hegel's speculative exposition of the historical conditions through which self-consciousness is immediately satisfied

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and unsatisfied by its activity. The idea of ethical unity which is developed in the *Philosophy of Right*, is the absolute mediatedness of concept and intuition; it is the law in which the substantive will of each recognizes itself in all its differentiation. In the dialectic of 'self-contained individuals' or the 'spiritual animal kingdom'<sup>37</sup> however, the differentiatedness of the subjective particular is without objective mediation: it is a point in the development of subjectivity, where it is the aporias of 'reflection' which implicitly determines the development of self-consciousness.

The self-contained individuality with which Hegel begins the dialectic of the spiritual animal kingdom, is the realization of the category of self-consciousness. Nothing exists for this consciousness which is not implicitly in its 'original nature'. The action of this individuality therefore, is the mediation of reason's 'observed' development of being in-itself, and its development as the 'practical' determinacy through which consciousness attempts to exist 'for itself'. The distinction which this individuality makes between itself as explicit content (interest) and itself as conscious subjectivity (purpose), is the phenomenological appearance of spirit's necessity, that is, the unity of knowledge and objectivity. The content of this individuality however, excludes the possibility of ethical recognition; for it is always the unmediated 'joy' of self-expression,

knowing that he can find in his objective actuality nothing but his unity with himself ... and knowing that he thus always attains his purpose [the individual] can experience only a sense of joy in himself. [*Phenomenology*, 425]

The 'joy' which this consciousness experiences in the realization of its implicit essence however, is simply the transient satisfaction which accompanies each of its deeds. The immediate presentation of essence in every contingent act, is constantly 'abandoned' by this consciousness; all of its work, satisfaction and desire is the reproduction of itself as pure negativity. Thus, consciousness' implicit essence (original nature), determines a negative self-relation in which its immediate knowledge is always of what is unessential to it.

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This separation from original nature which self-consciousness suffers through the finitude and contingency of its deeds, produces an 'honesty' of intent which encompasses all possible relations of the subject to the objective world. Each individual is infinitely modifiable in its real intent; each can 'lay hold' of complete satisfaction in any one of its particular moments: 'action (for actions' sake), 'means' (as an end in themselves), or 'purpose' (as pure, unrealized intent). The truth of this honesty however, is a universal deceit, in which the notion of purpose (that which is sustained through work, means and realization) is lost in an objectless volition that constantly evades determination: each individual confronts the other as a completely arbitrary activity, in which 'consciousness is never where it thinks it is'.<sup>38</sup>

The dialectic of the spiritual animal kingdom is the point at which the development of self-consciousness is determined through the logical form of external reflection.<sup>39</sup> The historical emergence of subjectivity as 'original nature', produces a form of misrecognition in which consciousness is immediately aware of itself through the complete loss of its actuality. None of the real determinations of self-consciousness (finite spirit), that is, the means, purposes and satisfaction through which it exists, have any objective significance for it: the transience (immediacy) of self-recognition determines it as an external essence which cannot produce an ethical relation. Ethical life therefore, is constituted as a 'presentation' (that which consciousness 'finds before itself') which remains external to the subjective reflection of each individual. This abstract interiority of real intent' leads each to deceive itself, and to be deceived by others.

Lyotard's claim that the phrase always presents the immediate heterogeneity of 'linkage' (onto the event), and that it constantly re-opens the question of legitimacy for each genre of discourse, constitutes the same lack of substantive difference constituted in the dialectic of self-contained individuality. The idea of obligation without conditions which Lyotard abstracts from the *Second Critique*, therefore, is grounded in the same external

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separation and difference whose subjective reflection (universal negative self-certainty) Kant legitimates in the critical morality. The externality and contingency of self-seeking, is sanctioned by a formal property law through which consciousness misrecognizes itself, the other and the universality of its work: nothing which is done by individual consciousness has any concrete significance for the other who becomes interested in it. The possibility of an ethical relationship founded upon the immediacy of subjective presentation, in other words, is the moment at which reason's abstract individualism is recognized as fundamentally inadequate to its actuality (spirit). Ethical and political judgements must proceed from the recognition of self-consciousness as 'being', rather than simply 'having', reason.

The abstract individuality constituted in the spiritual animal kingdom therefore, cannot remain in its condition of estrangement from the activities of others; although at this point in its development, self-conscious individuals are interested in these projects only in their direct relation to their particular 'work and effort'. The motivation for 'assisting' the other in his activity is to 'see and manifest one's own particular powers and capacities, not the realization of ethical substance: consciousness seems occupied on its own account ... and hence it seems to let others keep to their own fact'.<sup>40</sup>

That which is actually 'done' by this form of self-consciousness however, does have universal significance; for by its own action, the individual exposes the particularity of its purpose to the judgement of any one of the abstract individualities. This actualization, 'is an exposing of what is ones' own in the universal element where it comes to be and is a fact for everyone'.<sup>41</sup> The self-deception which has developed in the contingency of abstract individuals therefore, does not deny the other as active negativity; rather, the abstract conviction of essentiality issues in particular, subjective judgements made on the others' capacity for self-realization. Thus, the true object of autonomous activity (the state) must encompass these contingently determined relations of individuals; it must mediate the external state of reflective self-seeking. This

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object is neither a 'fact' opposed to action, nor an action which is opposed to 'permanence'<sup>42</sup>; it is a universal subjectivity in which each acknowledges the actuality of the other. It is, in fact, what Hegel calls 'spirit'.<sup>43</sup>

The *Phenomenology* therefore, determines the absolute contingency and heterogeneity of (subjective) presentation (of essence) as the necessity of universal mediation. The immediate presentation of an 'original nature' expounded in the dialectic of self-subsistent individuals, constitutes the necessity of universal recognition (spirit); while as an actual determination of a spirit, this immediate (individual) unity of consciousness' universal 'matter' with its subjective presentation, is produced through, and reproductive of, the lack of unity of ethical life. The abstract individual's intuition of its 'original nature' in all of its particular determinations becomes, in the 'terror' of the French Revolution, an infinitely destructive redetermination of subjective freedom. Thus, the idea of immediate 'presentation' presupposes an arbitrary, subjective difference (the universal 'deception' of the spiritual animal kingdom, or the 'lawlessness' of ethical life) in which the concept and intuition of substantive will are utterly without mediation. The (ethical) actuality of separation and difference cannot be recognized through this unmediated subjective 'reflection'.

It is Kant's morally spontaneous subject that appears in the *Phenomenology* as the moment of (abstract) reconciliation between consciousness and its objective determinations. Both the dialectics of the self-contained individuality and of the French Revolution, constitute universal self-recognition as an actual necessity; a necessity which the critical subject attempts to determine through the spontaneity of practical reason. The morally spontaneous will, which splits the actuality of the 'good', and the subjective determination of 'conscience', into two independent forms, is the active implicitude of ethical life. The abstraction of subjectivity and actuality posited in Kant's critical ethics, is precisely that through which the actuality of *Sittlichkeit* develops as their mediation,

when both build themselves into independent totalities, they are annulled and reduced to moments of the concept which

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becomes manifest in the [actual] unity. [*Philosophy of Right*, ¶141]

Thus, the concept of *Sittlichkeit* is implicit in the activity of the moral will; for it is Kant's privileging of 'reflection' over inclination which necessitates the realization of the 'good' in the determinations of the 'right' (law and custom).

The development which occurs through the moral will therefore, is always concrete with the historical conditions which produce it. The universal 'deception' of the spiritual animal kingdom, the 'terror' of the French Revolution, and the 'reflective' self-seeking of civil society, determine forms of abstract separation and difference which the moral will attempts to reconcile. This primacy of subjective reflection however, is incapable of realizing the idea of the ethical which is implicit in it; indeed, the abstract forms of individuality through which the moral will is phenomenologically determined, are actually reproduced through its activity. Thus, the self-determining consciousness which acknowledges only the formal universality of duty, recognizes the whole content (substance) of its life only as 'unessentiality'. This fixation of consciousness on self-reflection, is retraversed in the *Philosophy of Right's* account of civil society: each individual simply regards itself and the other as 'ideally' moral while actively pursuing its actual wants and needs in abstraction from its moral ideality. Hegel remarks in the *Philosophy of Right*,

Morality has its proper place in this sphere [civil society] where the paramount thing is reflection on ones doings, and the quest for happiness and private wants, and where the contingency in satisfying these makes into a duty even a single and contingent act of assistance. [*Philosophy of Rights*, ¶207]

It is only by 'bringing back' the external separation and difference of civil society to the 'Constitution of the State'<sup>44</sup>, that it is possible to mediate the abstract moments of subjectivity and actuality posited in the moral will. The account of civil society given in the *Philosophy of Right* demonstrates the necessity of the state, by expounding the relationship of the moral will, and immediate, contingent domination.



Lyotard's transcription of the critical philosophy as constantly disclosing the differend between 'occurrence' and 'cognition', obscures the actual determinations of (subjective) heterogeneity and contingency which are reflected in, and reinforced by, Kant's concepts of practical and theoretical reason. Contingent domination of each by the other, is perpetuated by a moral law which posits abstract separation and difference as its absolute precondition. It is in the state that this realm of self-reflection must be realized; for it is through the state that separation and difference ('subjective particularity') are recognized in their actuality. The law (of the state) in which formal subjectivity recognizes its absolute mediation (substantive freedom) is not simply posited; it springs from recognition of finite spirit as determining of, and determined by, its universal actuality. The idea of the state is the unity of self-consciousness with its objective formation; it is a recognition which is enshrined both in the law, and in every social institution.

Hegel's phenomenological exposition of the Kantian subject demonstrates that the historical necessity of its appearance is produced through the contradictions of pure 'presentation'. The actual significance of the Kantian subject is not its inability to 'situate' the 'occurrence' within the cognitive activity of the subject, but its re-positing of abstract separation and difference as the determining principle of ethical life. The necessity constituted through the lack of mediation expressed in the idea of *Darstellung*, or 'conjunction', therefore, is the mediation of subjective contingency and heterogeneity. Ethical recognition cannot be immediately 'presented'; in its concept it is a 'mediation' of abstract individual difference which must include every objective formation of subjectivity. Recognition of the law of the state, in other words, is recognition of absolute mediation; the (ethical) unity of concept and intuition.

Lyotard's reading of the critical philosophy as a cognitive negotiation of 'the givenness of presentation', fails in its attempt to abstract the activity of the transcendental subject from speculative determinations. The phenomenological forms which are the precondition of this subjectivity ('sense-immediacy', 'the

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spiritual animal kingdom,' and 'the terror of absolute freedom') all determine separation and difference as contradictory moments which necessitate mediation through the universal. The cognition (misrecognition) of the Kantian subject is actually determined through the contradictoriness of pure presentation; for neither the 'original nature' which is the fulfilment of reasons' abstract, individualized development, nor the unmediated 'idealism' of individuality, can determine an ethical relation. Self-consciousness' work, desire, and satisfaction (the actuality of finite spirit) remains unmediated in these forms; and it is this lack of unity which is presupposed by Kant's transcendental subjectivity. The development of self-consciousness through the faculties and cognitions posited by the critical philosophy, participates in the constitution of a subjective particular whose contingent difference (heterogeneity) is realized in the ethical substance of the state.

The historical event of 'Auschwitz' does not, as Lyotard maintains, ontologically rupture the unity of ethical life (*Sittlichkeit*): the 'Aryan' mythology simply deepens and reinforces the lack of unity (lawlessness) already present in the substance of the state. The possibility of universal mediation within the totality of social relations, customs and intuitions, is not posited by Hegel as a fixed 'teleological' goal; it is produced through the abstract forms of separation and difference which determine the development of self-consciousness. The forms of (subjective) contingency and heterogeneity expounded in the dialectic of the 'spiritual animal kingdom', produce a necessity which can only be fulfilled in the idea of the state, that is, in universal recognition. The immediate self-reflection of this moment produces an abstract recognition of universal dependency which must become explicit for self-consciousness. Phenomenologically therefore, Hegel's exposition of 'self-contained individuality'<sup>45</sup> is the point at which pure immediacy is shown to be constituted through the actuality of self-consciousness; and that as such, immediate presentation must 're-cognize' itself in the (objective) determinations of the state and ethical life. The event of Auschwitz therefore, signifies only the end of ethical life in this particular nation state (the Germany

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of the 'Thousand Year Reich'); it did not put an end to the substance of self-consciousness which must constantly 're-cognize' itself. It is this recognition of actuality (substance), not the presentation of heterogeneity, which is the necessary condition of ethical judgements.

*The Differend's* account of the *First Critique* has attempted to show that the phrase is the irreducible occurrence of linkage which constantly re-situates thinking in relation to the legitimacy of genres of discourse. Presentations are conceived as atomistic 'universes', or dispositions of addressor, addressee, sense and referent, which link onto the current phrase, but which, as 'events', remain undetermined by it. The indubitability of the phrase is its simple irreducibility: being is always presented; is always re-formed through the spontaneity of the event. It is these metalinguistic 'representations' of being, from the immediate 'presentation' of the phrase, which informs Lyotard's notion of critical judgement as openness to the infinite possibility of the present. For Lyotard, therefore, Kant's doctrine of experience begins with the assumption that what can be known of the universe of events, must be reducible to faculties of the transcendental subject; and that knowledge as such always involves representation.

Lyotard's reading of the 'Transcendental Aesthetic' as an original negotiation of the occurrence, and his claim that transcendental faculties constantly 'litigate' with one another, involves an attribution of self-consciousness to critical subjectivity which cannot be substantiated. Hegel's exposition of consciousness, set out at the beginning of the *Phenomenology*, shows that none of the subject-object relations presupposed by critical subjectivity are capable of producing concrete self-awareness. *The Differend's* 'juridical' conception of a *priori* faculties, which posits an original judgement of the occurrence as an otherness to be incorporated, fails to recognize that the relationship of affection and understanding (cognition) excludes such an ethical reception of otherness. Speculatively conceived, the discursive and intuitive faculties posited in the critical philosophy, suppress substantive self-recognition; for it is through the

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aporetic structure of phenomenal experience that the actuality of the self, its work, satisfaction and desire, becomes historical. Thus Lyotard's 'juridical' conception of the critical subject abstractly posits an identity of self-consciousness with each of the subject's constitutive activities: the immediate occurrence of each critical phrase is presented as the necessity of an inner litigation which ruptures the unity of representation. Thus, it is only by abstracting the faculties of the Kantian subject from their speculative determination of self-consciousness, I have argued, that Lyotard is able to present the *First Critique* as a suppression of the absolute contingency of linkage onto the occurrence.

Lyotard's conception of transcendental subjectivity fails to recognize the significance of Hegel's speculative critique of Kant's epistemology: that the negativity of consciousness which emerges from phenomenal experience, can only become self-conscious through confirmation in the other. What is represented in the forms of master and slave, are the conditions necessary to the development of self-consciousness through concrete misrecognition. The transitions which Hegel set out in the *Phenomenology*, expound the history of misrecognition: they articulate the aporias and contradictions determined by the abstract understanding (*Verstande*). Lyotard's attempt to abstract the pure immediacy of presentation from Kant's transcendental subject therefore, serves to reinforce the opposition between subject and object, obligation and law, which conditions Kant's concept of ethical necessity.

In the final two chapters, I will examine speculatively the relationship between Lyotard's reading of Kant, and the concept of critical judgement articulated in *The Differend's* sections on 'Genre, Norm' and 'The Sign of History'. In chapter four, I will look at Lyotard's reading of the 'Analytic of The Sublime', and his attempt to transcribe the 'negative pleasure' of Kant's aesthetic sensibility as presenting the necessity of critical ('unpredetermined') judgement. Prior to this however, I want to examine the concept of 'obligation' which Lyotard abstracts from Kant's critical ethics. Specifically, I will argue

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that the exposition of subjective morality which Hegel articulates in the *Phenomenology* and the *Philosophy of Right*, shows that a volition which acknowledges only its immediate reception of the good, is incapable of making substantial ethical judgements; and that consequently, Lyotard's abstraction of the formal possibility of freedom from the *Second Critique*, conditions an idea of judgement which is incapable of recognizing the ethical significance of the other.



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Chapter II  
Notes

1. *The Differend*, ¶124.
  2. *Ibid.*, ¶113.
  3. The 'matter' of sensible affection which, for Lyotard, is forgotten in the activity of the cognitive faculties, is abstracted from the 'Transcendental Aesthetic' as a pure 'givenness' which cannot be (cognitively) represented. This unrepresentable condition is what Lyotard transcribes in *The Differend* as 'presentation', or the immediacy of the phrase universe which cannot be abstracted from its heterogeneity. Thus, the reductive unrepresentability of the 'libidinal band' which Lyotard posits in his *Libidinal Economy*, becomes in *The Differend*, the spontaneously originated and originating necessity of critical judgement.
  4. *Phenomenology*, 90.
  5. *The Differend*, 131.
  6. See chapter three's account of Lyotard's 'obligation without conditions'.
  7. See chapter one.
  8. *The Differend*, 64.
  9. *Ibid.*, preface, xi.
  10. See Kant's *Critique of Judgement*, Introduction.
  11. Ernst Cassirer's detailed exposition of the relationship between the self and
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Kant's arguments for the necessity of the modes of intuition, points up the relationship between subjectivity and determinate judgements (of experience) which is developed in the *First Critique*. He remarks that inner and outer experience, self-consciousness and consciousness of the object, 'do not comprise "halves" of experience as a whole, which subsist independently of each other, but are conjoined in the same ensemble of universally valid and necessarily logical presuppositions.... Now the expression for both "self" and "object" is one and the same: the lawfulness of "experience in general" signified in the concept of transcendental apperception' [*Kant's Life and Thought*, 198]. Theoretical reason's presupposition of an intuitive (spatio-temporal) foundation however, is understood by Lyotard as the original 'annexation' of judgement to the principles of cognition. Kant's idea of the 'self' as the formal condition of determinate judgements, is presented in *The Differend* as dispersing self-consciousness throughout the discrete *a priori* conditions of (practical and theoretical) cognition. According to this reading therefore, the spontaneously originary relation of judgement to difference (incommensurability) disclosed in Kant's idea of the sublime, disperses the transcendental unity of the 'self' into the infinite possibility of phrasing (see chapter four).

12 *The Differend*, 64.

13. *Encyclopaedia Logic*, ¶225.

14. This relation is expounded more fully in Lyotard's third 'notice' on Kant. Here he develops the idea of 'realms of legitimacy' (genres) as related through a 'milieu' of spontaneous judgement, in the same way as the islands of an archipelago are related through commerce and conflict, each appropriating from and bartering with the others.

15. See chapter three.

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16. As Bennington makes clear in his *Lyotard: Writing the Event*, Lyotard's transcription of the 'Transcendental Aesthetic' 'attempts to problematize the necessity of the linkages through which the transcendental subject constitutes its phenomenal experience. The original "givenness" of the matter of intuition, is negotiated and re-presented by the subject through the "deictical" forms which allow the faculties of imagination, conception and sensibility to constitute it as (phenomenal) experience. It is this original "return" from the givenness of matter to the (cognitive) activity of the subject, according to Lyotard, that is re-presented in the *Second Critique* as "a description of justice as a state of affairs to be brought about' [*Lyotard: Writing the Event*, 137].
17. *The Differend's* account of the relation of intuition and concept (transcendental subjectivity), fails to recognize that the spatio-temporal 'representation' of the givenness of matter, does not bring intuition within the determining activity of cognition. The Kantian concept of theoretical reason remains dependent upon and external to the (spatio-temporal) intuitions it receives; while the activity of practical reason determines itself over against the desires and inclinations of sensible affection. It is only in the final section of the 'Subjective Logic', 'The Doctrine of The Notion', that the necessity of unifying the abstract autonomy of the Kantian will with the content it has exteriorized as heteronomy, is re-cognized. This re-cognition, as Gillian Rose points out in her *Hegel Contra Sociology*, is 'built out of ... the unity of the logic of being and the logic of essence' [186]: It is not until practical will has passed the Kantian and Fichtean moments of absolute finitude, that it can re-cognize itself in a substantive content: the 'idea of the good'. Lyotard's reading of the critical subject's immediate appropriation of otherness through the 'Transcendental Aesthetic' therefore, is a misrepresentation of the unifying power of critical 'subjectivity'.
18. *The Differend*, 62.
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19. For Lyotard, the matter of intuition is an otherness which cannot be integrated into the activity of the subject, and which must be negotiated and forgotten. It is this otherness which is represented in the Nazi mythology as the destructiveness of the Jew; as that which constantly threatens the integrity of the 'Aryan' race, and which must be liquidated.
  20. See chapter four, section two, on the relation of judgement to otherness.
  21. See Hegel's exposition of the transition from the abstract understanding to the consciousness of life, *Phenomenology*, 218-227.
  22. Richard Norman, in his *Hegel's Phenomenology, A Philosophical Introduction*, rightly identifies the subject-object relations expounded in the *Phenomenology's* section on consciousness, as expounding 'a general characterization of all these first three stages of the *Phenomenology* [ie. 'sense-certainty, perception and understanding'] [41]. Each, in other words, is characterized by a 'reductionist' duality (of concept and object) which abstractly privileges the being of the particular [42].
  23. *Phenomenology*, 197.
  24. *Ibid.*, 203.
  25. Kojève's concept of 'anthropogenetic desire' is an abstraction imposed upon the speculative transition of consciousness into self-consciousness. For Kojève, the desire which emerges in Hegel's concept of 'life', ie. the desire for recognition by, and confirmation in, the other, presupposes the anthropological form of the herd: the immediately social moment appears as an external requirement for the transition to self-awareness. This analysis however, fails to recognize that it is the desire which springs from consciousness' development of its relation to the ('independent') object,
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which is the condition of sociality as such: the universal negativity of consciousness (the Hobbesian war of all against all) is sufficient of itself to necessitate recognition of the possibility of submission to the other. Consciousness as such, produces the moment of immediate sociality, through desire's determination of historical contingency: the struggle for recognition does not occur within the 'society' of the herd. (For a discussion of Lyotard's concept of primitive, or 'pagan', communities, see chapter four, section two.)

26. Kojève's anthropological reading of Hegel's dialectic of master and slave, posits the violence of immediate desire as producing discrete 'anthropogenetic behaviours' from the immediate 'multiplicity' of the herd. In doing this however, Kojève's account of the development of self-consciousness expounded in the *Phenomenology*, depicts a multiplicity of 'human desires' which is prior to the actual social moment. For as Gadamer remarks in his *Hegel's Dialectic*, Kojève's example of human desire as desire for that which is desired, 'is used too early, for it has its true value as an illustration of the later [social] states in Hegel's way...' [note to 62]. This 'natural beginning' to human history, conditions Kojève's representation of the *Phenomenology* as the movement towards a (posited) utopian social organization, 'in which the interaction of Master and Slave must finally end in the "dialectical overcoming" of both of them' [*Introduction*, 9]. This notion of 'dialectical overcoming', posits absolute knowledge as an end from which abstraction and positing are absent; that is, as the (immediate) unity of the 'universal (ie. nonexpandible) and homogeneous (ie. non-transformable) state' [*Introduction*, 95]. Kojève's reading of the *Phenomenology*, in other words, supplements the activity of spirit as natural consciousness, in order to derive a concept of the state which is completely non-speculative.

27. *Natural Law: The Scientific Ways of Treating Natural Law in Moral Philosophy, And Its Relation to the Positive Sciences of Law.*

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28. 'This connection between the relations, the lack of identity, which arise in Kant and Fichte's philosophy and the real social relation to which the philosophical dichotomies correspond', Gillian Rose remarks in her *Hegel Contra Sociology*, 'is the most important and difficult point in this essay on natural law' [56]. This idea of an originating *a priority* as a reflection of abstract separation and difference, is developed throughout my exposition of *The Differend*. I have argued that Lyotard's notion of the spontaneity of presentation and judgement, in fact reflects 'the life of isolated individuals who exist in a relation to each other which excludes any real unity' [*ibid.*, 56].
29. *Philosophy of Right*, ¶182.
30. Avinieri, in his *Hegel's Theory of the Modern State*, makes the objective necessity of this development to the concept of the state, and the substantive difference which its activity sustains: 'The [*Logic's*] part on objective spirit is dealt with in much greater detail in the *Philosophy of Right*. It is the part which concerns itself with the law, morality and ethical life (*Sittlichkeit*) as the objective, institutional expressions of spirit' [132].
31. *The Differend*, ¶191.
32. *Ibid.*, 126.
33. *Philosophy of Right*, ¶182.
34. See note on Adorno, chapter one.
35. *Heidegger and "the jews"*, section 1.
36. *Ibid.*, section 8.
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37. *Phenomenology*, 417.

38. *Ibid.*, 427.

39. *Science of Logic*, 403-404.

40. *Phenomenology*, 436.

41. *Ibid.*, 437.

42. *Ibid.*, 438.

43. As Hyppolite points out in his account of the dialectic of self-contained individuality, 'The double contradiction of content (the thing in general and my thing in particular) and form (being-for-itself and being-for-others) must be resolved in a higher synthesis, in which the thing itself rises from being an abstract predicate, to being a concrete subject' [*Genesis and Structure of Hegel's Phenomenology of Spirit*, 314]. The 'honesty' of the abstract individual invokes the universal (the in-itself) as that which is pursued in the most self-serving of its actions (or contemplated in its reflection); while its methodical pursuit of (objectively) universal goals appears to it as the exercise of its pure individuality. It is this inability of self-consciousness to grasp its own universality, which demands its re-cognition of the spirituality of its object, ie. the universal mediation of its activity.

44. *Philosophy of Right*, ¶57.

45. *Phenomenology*, 413.

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### Chapter III

#### Obligation, Morality and Authority

The spontaneity of phrasing which Lyotard expounds in *The Differend's* section on 'presentation', is the condition upon which his conception of ethics and philosophy is founded. The phrase 'presents' the immediacy of linkage onto the event; it is the elementary form through which Lyotard articulates thinking's spontaneous relation to difference, and resistance to generic discourses. This spontaneity of linkage is the ontological condition to which thinking must become sensitive; for it is through this immediate sensitivity that the 'affection' of congruent experience by difference and differend can be phrased in its uniqueness. Philosophical and ethical 'genres' are for Lyotard related through their non-predetermination of 'rules' of linkage; both expound the necessity of receiving and phrasing the heterogeneity to which thinking is ultimately responsible,

[Philosophical discourse] has as its rule to discover its rule: its *a priori* is what it has at stake. It is a matter of formulating this rule, which can only be done at the end, if there is an end. Time therefore, cannot be excluded from this discourse without its ceasing to be philosophical. [*The Differend*, ¶98]

This responsibility not to prejudge the contingency of the event, is presented in *The Differend* as uniquely ethical: for Lyotard it is the 'conditionlessness' of pure obligation, and this alone, which is ethically related to difference and incommensurability. Obligation ought to be a matter of 'sensitivity' to the unphrased.

Lyotard's 'preliminary' question regarding the idea of obligation, is how 'the request emanating from this entity (God, The Reich &c.) [is] received as though it were a law'.<sup>1</sup> The power of the prescriptive phrase is the immediate 'situation' of an 'addressee': the 'I' of origination and initiation, is immediately displaced by the 'you' which has always-already accepted its obligation to the same authority. The moment of obligation is unrelatable as such; for by 'explaining', or 'describing' the moment of submission to authority, one becomes the 'addressor' (the 'I') of phrases which cannot recall that submission. Thus,



the moment of prescription, the 'you ought to', discloses the absolute 'transcendence of the I': thinking, or 'phrasing' is infinitely dispersed in its reception of the obligatory. Obligation can only be 'signified' by the addressee of the prescriptive phrase.

For Lyotard, obligation 'situates' one as the 'you', or addressee of a prescriptive phrase; it is the immediate acceptance of oneself as obligated. On this reading, there can be no 'experience' of obligation: it cannot be explained, as it is simply the moment of submission,

What you judge to be the Lord's call is the situation of you when I is deprived of experience, 'estranged', alienated, disauthorized. You do not therefore, have experience of the Lord, nor even of his alienness. If you were to have that experience, it would not be the Lord, and it would not be ethics [*The Differend*, ¶172]

The concept of obligation which is set out in *The Differend* cannot be definitively phrased through generic ideas of 'good' or 'totality'. Such ideas, according to Lyotard, are abstractions which homogenize the contingency of linkage, and suppress the dispersal of obligation. For Lyotard, 'Auschwitz' is the name which disperses obligation into the unexpressed-inexpressibility of wrong and the micrological significations of phrasing. The event of the death camps is conceived as disclosing an utter heterogeneity of legislation and obligation which cannot engender the speculative concept of law: the identity of formal (finite) and substantive (infinite) will. Thus, according to the conception of 'ethical time' presented in *The Differend*, there is a homology between the 'metaphysical' idea of the self (*Selbst*) developed in speculative thinking, and the mythology of 'Aryan' race: both attempt to derive obligation from the establishment of the true. For Lyotard however, obligation 'is not'; it 'is' only as immediate responsibility to difference.

The necessity of linkage onto the occurrence is not a matter of prescription: the necessity of the 'and a phrase' is expounded in *The Differend* as 'ontological', not ethical. For Lyotard, the possibility of obligation is the condition of generic discourses, each of which 'prescribes' specific means to realize their particular ends. The possibility of generic narratives of

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formulation and linkage among phrase regimes, is conceived as dependent upon the possibility of obligation,

These [generic discourses] give rise, but do not more than give rise, to obligation. It is thus that Kant questions the capacity of the 'ought' itself, without conditions. [*The Differend*, ¶174]

Obligation is presented as the condition of 'ethical time', or the reception of 'conditionless' obligation to difference.<sup>2</sup> For Lyotard, philosophy and ethics are the only discourses whose conditions cannot be made explicit, and which, as such, can receive the silence of wrong and differend:

One's responsibility towards thought consists ... in detecting differends and finding the (impossible) idiom for phrasing them [*The Differend*, ¶202]

In his account of the function of the 'Transcendental Aesthetic' in Kant's *First Critique*, Lyotard attempts to show that the pure givenness of the 'matter' of intuition is a moment ('idiom') which cannot be encompassed within the genre of cognition.<sup>3</sup> His argument is that a differend exists between the phrases that produce Kant's 'representational' (phenomenal) form of knowledge and the phrase of absolute exteriority. The constitution of appearances, in other words, forecloses on the givenness of the event; linkage is homogenized in the cognitive negotiation of contingency entailed in Kant's 'modes of intuition' (space and time). Lyotard's reading of the *Second Critique* maintains the same line of argument. His claim is that critical ethics is a generic privileging of cognition which involves reducing obligation to the validity of a particular form of authority (the republic of rational beings pursuing rational ends).

'A phrase', according to Lyotard, 'is obligatory [simply] if the addressee is obligated': explanations merely 'situate' the addressee of a prescriptive phrase within other, heterogeneous regimes in which he or she is the 'addressor'.<sup>4</sup> The concept of an authority which obligates through the (universal) explicability and communicability of 'idea' therefore, is explicitly opposed to *The Differend's* exposition of obligation. For Lyotard, both Kant and Hegel suppress the heterogeneity and contingency of the obligation by attempting to show that it is

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entailed in the 'cognition', or recognition, of a rational authority. Both critical and speculative thought give rise to a differend which is signified by a particular dilemma: either the addressee of a prescription can explain his or her obligation, in which case the addressor of authority ceases to obligate, or he or she explains that his or her law is inexplicable to the (cognitive or speculative) tribunal, in which case it is arbitrary and not obligatory. Thus the 'rules' of cognitive and speculative thinking, by which *The Differend* distinguishes Kantian and Hegelian philosophies, both attempt to ground obligation in a universally communicable 'truth',

This tribunal [that of the 'cognitive genre'] requires that the obligatory be only that which the obligated one can reasonably account for in argumentation. It therefore supposes that I can occupy the place of addressor in prescriptives, that I can assume them. They are obligatory because I can understand their sense and explain them to the tribunal. The value of the explanation is its truth value, which is universal. Through this dilemma, the family of cognitive phrases annexes the family of prescriptive phrases, the I effaces the you. [*The Differend*, ¶176]

This 'rational' annexation, according to Lyotard, depends upon ideas of selfhood and community which cannot be sustained 'after Auschwitz': thinking, after the events of the death camps, ought to acknowledge only the infinite possibility of differends.

The issues that will be examined in this third chapter are, firstly, the misreading to which Lyotard subjects Kant's *Second Critique* in order to develop his particular conception of 'obligation', and secondly, his failure to recognize the significance of Hegel's speculative reading of critical ethics. The question of why Lyotard conceives Kantian morality as ultimately non-ethical, will be considered in the light of the speculative critique of presentation set out in the preceding chapter. The latter question, that of how the logical and phenomenological elements of Hegel's philosophy disclose the actual significance of critical ethics, will be developed through the notion of speculative recognition expounded in chapters one and two. This section will show that Lyotard's conception of obligation cannot constitute an actual ethical relation; and that it is only through speculative exposition of critical morality

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and its presuppositions, that such a relation is possible.

The transcription of Kant's critical ethics which Lyotard presents in *The Differend's* second 'Kant notice', is focussed primarily upon the relationship between moral obligation, and the 'cosmological' idea of the will's spontaneous causality.<sup>5</sup> For Lyotard, the impossibility of 'deducing' the noumenal autonomy of the will from any of the phenomenal, or 'objective', conditions which it produces, leads the argument of the *Second Critique* to presuppose the existence of a rationally autonomous will. The discourse of the moral law, what Lyotard refers to as its critical 'metalanguage', posits this law as the authorization of the 'object' phrase which asserts the freedom of the will. Thus, consciousness of freedom is conceived by Kant as a fact of reason; for, although it cannot be established through the deduction of cognitive principles, it is given *a priori* through the discourse of the moral law,

of all intelligible objects ... nothing [is known] except freedom, and even this only insofar as it is a presupposition inseparable from the moral law. [*Critique of Practical Reason*, 73]

The 'You ought to' of moral obligation, in other words, is received not as a sensibly determined appearance, but 'in an ideal nature by the faculty of desire'.

The philosophical task which is undertaken by Kant in the *Critique of Practical Reason*, is to deduce the spontaneity of the will from the necessity of its obligation to duty, or the moral law. For Lyotard this enterprise must inevitably founder on the differend that exists between the 'cosmological' discourse of spontaneous initiation, and the 'ethical' phrase of reception and obligation,

The question to put to [the] critical metalanguage [of practical reason] is knowing whether the you in *You ought to* and the you in *You are able to* are the same you, whether the entity that is obligated and the entity that is the first cause are the same entity. [*The Differend*, 121]

Kant's postulation of the 'ought' (*sollen*) as a 'fact of reason', is presented in *The Differend* as implying an 'incomprehensible' power which is free in and for

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itself: the divine 'I' of God beyond cognitive explanation. This power, according to Lyotard, is what is disclosed, or 'signified', in the feeling of respect engendered *a priori* by the moral law. On this reading of the *Second Critique*, the addressee (subject) of moral obligation, or prescriptive phrases, cannot be the author: the Kantian subject can only receive the moral law as 'dependence', 'constraint', or 'coercion',

The addressor [God/Freedom] is the one who is able to, who is the power. And if the addressor, in the universe of the phrase of obligation, were to speak about him or herself, he or she would say *I*, as he or she would say *you* in obligating the addressee (*you ought to*). [*The Differend*, 121-2]

This problem of the 'compossibility' of moral law and autonomy, which Kant attempts to resolve in the *Second Critique*, is transcribed in *The Differend* as a 'dispossession' experienced by the addressee who is faced by the unknowable power of first causality (God, cosmological freedom): 'All that is known is that freedom does no more than announce itself to the addressee of the law through the feeling of obligation'.<sup>6</sup> The solution which Kant offers to the claim that good will is simply the negation of efficient ('heteronomous') causality, is what informs Lyotard's reading of the *Second Critique* as encountering, negotiating, and ultimately suppressing the spontaneity of linkage and phrasing. The introduction to the *Critique of Judgement* states explicitly that there is a 'gulf' separating the realms of practical and theoretical reason. On Lyotard's transcription, this separation is the condition of the independence (autonomy) of reason's practical and theoretical forms: each is dependent upon the autonomy of the other in the determination of its 'realm' in the 'territory' of critical philosophy<sup>7</sup>,

there is no abyss [gulf] ... except because of each party - to dip back into the forensic or warrior symbolism - grants itself a right of inspection over the other's argumentation, and so extends its pretensions over the borders. It is at this price that each party discovers its borders. [*The Differend*, 123]

On this reading, Kant's argument 'by analogy' with the *First Critique*, that spontaneous causality must entail the production of effects in the phenomenal world, is an attempt to empower good will at the moment of obligation. The

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'You' of obligation is no longer 'coerced' or 'dispossessed'; the compossibility of noumenal and phenomenal causality allows a simultaneity of agency and obligation,

The I is ideal, but it is presented (as absent) in the universe of this phrase as what makes it mediately effective: at the same time (the time of obligation) as the you ought to, the I is able to. [*The Differend*, 122]

Kant's idea of treating the principles of practical reason 'as if' they were laws of nature therefore, is read by Lyotard as the disclosure of a judgement, made within the territory of critical philosophy, which acknowledges their respective realms as actively heterogeneous. The relationship of theoretical to practical determinations of reason, is 'critical', on Lyotard's reading, because the 'abyss' between them is 'neither filled in nor hollowed out'<sup>8</sup>,

The 'as if' depends upon the transcendental imagination for the invention of comparison, but it depends upon the faculty of judgement for its regulation. [*The Differend*, 123]

The solution to the problem of moral agency which is offered in the *Second Critique* is understood by Lyotard as disclosing the difference of cognitive and ethical discourses ('genres'), and the necessity of judgement in legitimizing boundaries and functions.

This disclosure of 'incommensurability' between the faculties of practical and theoretical reason, is not received as an ethical demand within the *Second Critique*. For Kant, the will must be able to know its particular duty in relation to the universality of the moral law; and so there must be a determinate principle through which the will can establish unconditionally the content of its obligation. This is Kant's idea of the 'type', or the 'form of lawfulness in general'.

The rule of judgement under law of practical reason is: Ask yourself whether if the action you propose should take place by a law of nature of which you yourself were a part, you could regard it as possible through your will. [*Critique of Practical Reason*, 72]

The introduction of this idea into the *Second Critique*, is for Lyotard the point at which he abandons the ethical possibility disclosed in the concept of the



'abyss' (between practical and theoretical reason), for the idea of a 'suprasensible nature' which dominates spontaneous judgement of difference.<sup>9</sup>

Kant's demand that one should 'act as if [you] were at all times a member of a realm of [human] ends ...'<sup>10</sup>, is transcribed in *The Differend* as constituting an identity of the 'addressor' ('I') and the 'addressee' ('you') of the moral law. For Lyotard, the 'typic' of the categorical imperative, by commanding recognition of oneself and others as ends in themselves, reduces 'obligation' to the interactivity (consensus and exchange) determined in Kant's analogy with the serial cause (the theoretical determination of appearances). On this reading the *Second Critique* ends up by deducing the authority of the moral law from its production of a dialogical community of addressor/addressees. Critical ethics is presented in *The Differend* as dependent upon the positing of a republic of rational beings in which each individual recognizes him/herself as both legislator and subject. Lyotard remarks,

Isn't an abyss filled in there, from the fact of this perfect symmetry? And isn't the regimen of obligation annexed right down to the form of its phrases by the regimen of cognition... Hasn't the commentary on the ethical phrase, here the critical, but nevertheless still descriptive, once again obtained the inevitable result ... of reducing ethical legitimation to cognitive legitimation, in particular by imposing onto the former the rule of the latter, namely the result of consensus and the exchangeability between partners, the rule of dialogue. [*The Differend*, 125]

For Lyotard, Kant's assumption of spontaneous 'free will' as the undeducible condition of the moral law, immediately forecloses on the possibility of such a community. Autonomy is presented in *The Differend* as the absolutely unconditioned moment of judgement which obligates through its pure immediacy,

causality through freedom is immediate, that is, without mediation, but also without recurrence. Its efficiency is instantaneous, pure will obligates and that is all. It is but beginning. [*The Differend*, 126]

The essence of Lyotard's reading of the *Second Critique* is presented in this conception of the absolute discontinuity of 'ethical time' and serial causality.

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'Performative causality' is immediate resistance to homogenization and communicability: for Lyotard there can be no necessary production from the ethical phrase, not even the 'suprasensible idea' of a realm of human ends.<sup>11</sup>

Kant's postulation of 'compossibility' between 'natural conditions' and moral prescription therefore, is read by Lyotard as an attempt to suppress the spontaneity of obligation through its production of a determinate end: the 'ethical community'. The heterogeneity of cognition and obligation which Kant encounters and negotiates in his idea of the 'abyss' is suppressed in the notion of an ethical 'nature' which is the consequence (end) of moral autonomy,

No 'nature', not even a suprasensible one, not even as an idea, can result from obligation. The imperative does not command one to act so as to produce a community of practical, reasonable beings, but as if the maxim of action were supposed to be a law of this community. As a sign, the ethical phrase is without sequel, and thus final. [*The Differend*, 127]

The possibility of cognitive referentiality is not excluded by *The Differend's* presentation of obligation. However, Lyotard's conception of the 'non-transitive' nature of ethical time, such a linkage must necessarily exclude a 'world' of ethical phrases: there is 'either implication or obligation'.

Speculatively read, the 'heteronomy' constituted through Kant's transcendental faculties, presupposes the lack of concrete self-recognition which is produced and sustained in civil society. The abstract separation and difference which is the condition of critical ethics however, discloses an objective dependency which, although only at the level of (external) reflection, participates in the development of substantive will. The self-consistent universality of Kant's moral law in other words, is originally implicated in the objective forms through which that presentation occurs. Thus, the transcendental activity through which Lyotard expounds the critical philosophy's ethical 'negotiation' of the occurrence, constitutes an aporetic form of willing which reinforces the lack of mediation in bourgeois property relations.

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The lack of unity presupposed by Kant's critical epistemology, i.e. the domination of the concept by the necessity of its relation to intuition, is for Hegel reproduced in the critical morality as the subjective concept's reinforcement of the inequality of bourgeois property relations. The self-seeking of the abstract particular, is re-presented through moral maxims which can spontaneously legitimate any act of appropriation or disposal. The relationship of critical subjectivity to the substance of ethical life, discloses a presupposition of abstract separation and difference in which the primacy of spontaneous self-determination is rooted. Speculatively read, the immediate 'presentation' of obligation cannot be abstracted from the historical conditions in which it is formed, and which it reinforces. Thus, the *Phenomenology's* expositions of Consciousness (Force and the Understanding), Reason (the 'spiritual animal kingdom') and Spirit (Absolute Freedom and Terror) explicate estrangements of concept and intuition, whose mediation appears as the activity of Kant's critical subject.

*The Differend's* attempt to show that speculative phenomenology presupposes a 'metaphysical' idea of identity (the *Selbst*), depends upon the notion of an unoblatable moment of prescription. The obligation of the deportee simply to die, is read as the absence of the concept from secular life: 'Auschwitz' is a community which is not a community. The question of obligation 'after Auschwitz' cannot have recourse to speculative sublation; for the identity of the law and substantive will is absolutely dispersed. Lyotard's analysis of thinking's ethical response to the Nazi slaughter, is to make the unconditioned 'freedom' presupposed by Kant's moral autonomy, immediately responsible to the possibility of wrong and differend constituted through 'representation'. For Lyotard, both critical and speculative discourses attempt to articulate the 'conditions' of obligation; and so neither can command without dominating,

Certainly someone who decides the law instead of being its addressee, cannot be a judge but is necessarily a criminal. And someone who submits to law decided in this way can only be a victim. [*The Differend*, ¶161]

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On Lyotard's transcription, the force of the moral law is experienced as the feeling of 'constraint' and 'coercion': the 'freedom' which Kant formally allows the critical subject to disobey the command of the categorical imperative, always does violence to the spontaneity of obligation,

The addressee may indeed link on with an *I won't do it*, but he or she was still first a you grabbed hold of by the obligation. Obligation is analogous to a constraint insofar as it is the displacement of an I onto an addressee instance, its being taken hostage. [*The Differend*, 121]

*The Differend's* presentation of the *Second Critique*, begins by trying to show that the formal (transcendental) conditions of critical ethics, inevitably 'situate' the subject of prescription in a 'non-performative' relation to the ethical command. For Lyotard, the 'I' of spontaneous freedom is originally alienated by Kant to the 'inscrutable' being of God, only to be brought back into the universe of moral autonomy by the idea of 'compossibility' between practical and theoretical determination. Kant's notion of the 'type', by its claim that the production of effects is necessary to any concept of causality, including that of the good will, is what 'conjoins' the ideas of 'suprasensible' nature and freedom. This notion of conformity to the form of lawfulness in general, is conceived by Lyotard as suppressing the contingent judgements through which the immediacy of obligation occurs: 'spontaneous' will becomes subject to the presumption of a universally 'explicable' authority in which the 'I' is both 'addressor' and 'addressee'.

Kant's admission of the impossibility of deducing the moral law therefore, is read by Lyotard as disclosing the pure immediacy of obligation, or 'ethical time'.<sup>12</sup> The 'transcendental illusion' which is engendered by the *Second Critique*, is presented in *The Differend* as the 'situation' of the ethical moment in serial time: the concept of a realm of absolute human ends, for Lyotard, suppresses the beginning of ethical time precisely because it determines a necessary end. Any 'production', or 'implication', attributed to ethical time, constitutes its suppression; the ethical is the absolute exclusion of 'discourses' of recognition and mediation,



The blindness, or transcendental illusion resides in the pretension to found the good or the just upon the true, or what ought to be on what is. [*The Differend*, ¶166]

The speculative questions raised by Lyotard's non-conceptual 'obligation' to difference, must be approached through his transcription of Kant's critical ethics. The preceding chapter has expounded how critical subjectivity, through the lack of unity in its practical and theoretical forms, reflects and sustains the dominance of subjective particularity in social relations. Thus, the fundamental question arising from *The Differend's* transcription of the *Second Critique*, concerns how the 'power' of spontaneous causality, which Kant attributes to the purely formal independence of the will, contributes to the historical development of consciousness towards self-recognition. I will argue that the forms of agency and passivity, through which the moral will is expounded in the *Phenomenology*, constitute aporetic relations of concept and object, subjectivity and actuality, which can only be explicated speculatively. The necessity which emerges in consciousness' 'moral view of the world'<sup>13</sup> constitutes an implicit recognition of the law as active mediation of subject and object: critical morality is the form through which spontaneous reception of the right, is sublated in the concept of the law. It is this sublation which is the historical condition of the logical, ethical and political necessity which Hegel expounds in the law of the notion. By extension of this critique of abstract self-legislation to *The Differend's* idea of obligation, I will show that Lyotard's spontaneous reception of difference is afflicted by the same aporias and contradictions as Kant's moral will.

For Lyotard, the law to which Kant's moral consciousness understands itself as subject, is originally received as coercion and constraint. The moment of obligation to the moral law is understood as determining God as an absolute power ('addressor') who victimizes the subject ('addressee') through the form of the categorical imperative (the absolute command: 'You ought to'). This conception of the relationship between the power of God, and the agency of moral consciousness however, fails to recognize the presuppositions upon which

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consciousness has become morally disposed towards its activity.

Hegel's speculative account of the French Revolution has shown that it is the absence of formal property law which determines the destructive relation of an abstract, indeterminate 'matter' of humanity to the substance of ethical life. With the institution of formal property relations there emerges the illusion of universality through which the moral self-consciousness masks the conflict and antagonism of particular interests. The unconditional command of the moral law determines an apparent universality within the atomism of civil society.<sup>14</sup> The relative ethical life in which moral self-consciousness participates therefore, reproduces the externality of the *Phenomenology's* 'spiritual animal kingdom' ('Self-contained individuals associated as a kingdom of animals'<sup>15</sup>): the 'spirituality' of the relation between universal and particular is only apparent, for each is concerned to 'produce' only for its own particular needs, and not the whole of society. Ethical life is an 'animal kingdom', in which each is excluded from the 'matter in hand', in which the other satisfies its needs.

This self-certain consciousness which creates the actuality of its work, also destroys it; for what is produced, is produced simply for its own particularity, and so has no objective existence for the other or itself. In being true to itself, consciousness cannot help but deceive those who become interested in its work; for its 'honesty' of purpose (moral autonomy) always conceals particular interest. Since this deception is universal however, the 'joy' of absolute self-recognition in each particular action, comes to be displaced by a limited experience of the non-actuality of work. The content of Kant's critical morality is a reflection of the subjective particularity which dominates ethical life: each form of its universalizing, 'Reason as Testing Laws', and 'Reason as Law Giver', presupposes an exteriority and separation which it serves to reinforce. The demand for universal recognition inherent in the moral consciousness is expounded in the *Philosophy of Right* as possible only through the development of a relative ethical life in which the law has its actuality.

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Moral consciousness' establishment as a 'culture' dominating ethical life, is expounded in the *Phenomenology* as a negative relation of subjectivity to actuality: nothing which is done by consciousness is acknowledged by it in its relation to the substance of ethical life.<sup>16</sup> Kant's definition of freedom as originally opposed to the heteronomy of nature, constitutes the moral law as an infinitely unrealizable task which can find no satisfaction in the elements of *Sittlichkeit*. The critical subject, unable to produce a unity of its moral actions and the actuality of 'nature', can only think, or 'postulate' this unity as the absolute condition upon which self-determination can take place. Thus, God is related to moral consciousness as the guarantor of the moral law,

Consciousness ... places pure duty in another form of being than its own consciousness ... In the same way it affirms itself to be that whose actuality, not being in conformity with duty, is transcended, and *qua* transcended, or in the idea of the Absolute [God's view], no longer contradicts morality. [*Phenomenology*, 624]

Lyotard's transcription of the critical ethics fails to recognize that Kant's postulation of 'the existence of God as necessarily belonging to the possibility of the highest good'<sup>17</sup> presupposes a form of domination which is not designated simply by the structure ('universe') of the moral imperative. Obligation to the moral law can be presented as pure 'constraint' and 'coercion' only when critical subjectivity's speculative relation to ethical life is abstractly excluded: it is consciousness' certainty of itself which constitutes the power of the moral imperative in relation to *Sittlichkeit*,

It [self-consciousness] is absolutely free in that it knows its freedom; and just this very knowledge of this freedom is its substance, its purpose, its sole and only content. [*Phenomenology*, 614]

The moral law cannot create the power of an absolute 'addressor' (God); for it is the expression of consciousness' abstract self-certainty. The God of morality is actually determined through consciousness' creation of a law which is both absolutely transparent to it, and absolutely abstract: duty, the object of the moral law, is always unrealized, non-actual. Kant's idea of God is not an absolute power over the subject ('addressee'); it is rather a contradictory



'thought' in which the harmony of nature and morality is posited 'beyond' the actual determinations of ethical life,

Therefore, the supreme cause of nature, insofar as it must be presupposed for the highest good, is a being which is the cause ... of nature through understanding and will i.e. God [the highest good]. Now it was our duty to promote the highest good, and it is ... a necessity connected with duty to presuppose the possibility of this highest good. [*Critique of Practical Reason*, 130]

Speculatively conceived, the God which ought to be assumed in the enactment of one's moral duty, is the non-actual 'thought' of unity which is inherent in the moral law. Self consciousness is in a state of constant striving, whose end, the idea of God, is posited as a mere 'thought' beyond its secular existence. *The Differend's* account of the *Second Critique* however, expounds the cognitions of the moral will as homogenizing forms which suppress the spontaneity of obligation. The categorical imperative is taken simply as a non-historical moment of domination, which requires the compossibility of 'performative' and 'serial' causality in order to allow the possibility of rationalizing its authority. The critical notion of God, or the idea of an absolute 'addressor', is the agency by which Kant attempts to appropriate 'performative' obligation to the authority of a rational (dialogical) community. This reading of the problem of moral autonomy, fails to recognize that all particular satisfaction and enjoyment is alienated from subjectivity; and that consequently the power of Kant's postulated God lies in the universal deception of self-consciousness in regard to its actuality.

Kant's conception of the relationship between free will and obligation does not, as Lyotard maintains in *The Differend*, produce a subject which is immediately dominated by the command of the moral law. Rather, moral self-consciousness has no concrete recognition of itself, or of the other: it is the universal 'dissembling' of its motivations through the positing of a God who guarantees the unity of duty with the 'highest good'. Such a God however, is a contradiction. He cannot be 'actual' and 'beyond the actual'; He cannot be 'moral' and beyond the struggle with nature which determines duty as an

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'infinite task'. Moral consciousness has no phenomenal or noumenal object; its judgements can determine no concrete relation between the good as such, and the particularity of the actions in which it is realized. The subjection of moral self-consciousness to external domination does not have the transparency of the master-slave relation: the critical subject is dominated by contingent wants and desires which it re-presents, through the categorical imperative, as morally legitimate.

The reading of critical morality which Lyotard presents in *The Differend* tries to show that the attempt to secure the effectiveness of moral determinations in the world, is part of a process by which Kant reduces the contingency of ethical linkage. The analogy which Kant draws between the concept of a causality expounded in the *First Critique*, and the spontaneity of the will posited in the *Second*, is understood by Lyotard as the precondition of a rational authority, under which the subject of the moral law because both its 'addressor' and 'addressee'. This misrecognition of critical ethics, presupposes *The Differend's* critique of Hegel's speculative phenomenology as a methodological suppression of difference which is unable to sustain itself after the end of spiritual community at 'Auschwitz'. Both critical and speculative ethics are expounded as teleological discourses which exclude the heterogeneity to which thinking ought to be responsible. Difference, for Lyotard, has no substantive being through which contingency can be judged; and so the obligation to phrase the 'unphraseable' is always 'other' than the 'conditions' of obligation. I will argue that Hegel's concept of law, is the form through which obligation to difference and differentiation becomes ethically necessary.

According to Lyotard's transcription of Kant's analogy between 'serial' and 'performative' causality, the idea of treating the determinations of practical reason 'as if' they were laws of nature, discloses a judgement, made within the 'territory' of critical philosophy, that shows their respective realms as actively heterogeneous. The relationship of theoretical to practical determinations of reason, is 'critical', on this understanding, because the 'abyss' between them is

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'neither filled in nor hollowed out'<sup>18</sup>: each realm of legitimacy is judged and rejudged through contingent linkages onto the occurrence. This notion of the 'abyss' in other words, is understood by Lyotard as disclosing the differend that exists between cognitive and ethical discourses, and the necessity of 'non-predetermined' judgements in establishing and sustaining the integrity of generic 'boundaries'.

Obligation is presented in *The Differend* as the unconditional incommunicability of linkage: it is the command of an ungroundable authority. As such, it cannot be explained or related without violating the integrity of the ethical moment. Thus, the freedom, or non-predetermination, of judgement is related identically to the ethical; for it is only in the absence of communicable 'rules' of discourse, that obligation can occur. Philosophy and ethics are for Lyotard the only 'genres' whose conditions cannot be made explicit, and which, as such, can receive and phrase the 'silence' of wrong and differend.

The *Phenomenology's* exposition of morality shows that the abstractness of the moral law cannot be overcome simply by positing the analogy between phenomenal and noumenal causality. God is required to guarantee the necessity of duty; and His guarantee reinforces the abstraction and domination to which self-consciousness is subject in the 'spiritual animal kingdom' of use and disposal. It is this power of reinforcing the domination of contingent differences which is of crucial significance in expounding critical ethics. On Lyotard's reading, Kant's *Second Critique* is conceived as a suppression of difference because the 'thought' of God is taken as sufficient to 'annex' the will to a community of beings. Speculatively conceived however, this thought reinforces subjectivity's abstraction from the substantive forms in which difference has its ethical significance. Kant's attempt to provide the *a priori* conditions of moral autonomy is contentless: the categorical imperative cannot command because its formal criterion of ethical validity can justify any particular action. Thus, the practical cognition expounded in the *Second Critique* can never fill in the 'abyss' between practical and theoretical reason:

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speculatively conceived, both Kant and Lyotard's conceptions of obligation presuppose the arbitrariness of subjective particularity.

The fundamental point which Lyotard attempts to make through his reading of the *Second Critique*, is that Kant's approach to the problem of 'compossibility' of agency and moral obligation, both discloses and suppresses the immediate relation between spontaneity (of 'linkage') and obligation. For Lyotard, the power of 'performative' causality is immediately heterogeneous and contingent; nothing is 'implied' by the 'prescriptive phrase', as its occurrence determines nothing beyond itself. Thus, Kant's idea of a 'suprasensible' realm of human ends as the production of moral activity, is understood by Lyotard as fundamentally at odds with the possibility of ethical judgement; for 'ethical time', as pure 'beginning', cannot realize itself as nature or idea.

By radically distinguishing the pure immediacy of 'ethical time' from the Kantian idea of a realm of universal human ends, Lyotard determines a form of subjectivity which is, *a fortiori*, incapable of recognizing any necessity other than its own self-conviction. The reading of critical ethics presented in *The Differend*, fails to recognize that the moral law's abstraction of the subject from the actual determinations of *Sittlichkeit*, produces a form of self-consciousness which is dominated by the contingent wants, desires and satisfactions of subjective particularity. This 'moral' consciousness does not experience the 'thought' of God as the unity of its activity with the world: its experience is that of estrangement from the posited condition of its obligation. This is the phenomenological significance of absolute ethical spontaneity; for having come to a limited awareness of the antinomy of action and realization, moral consciousness retreats into itself, reinforcing the abstraction of the moral will. Morality passes over into the pure self-conviction of 'conscience', whose duty is no longer re-cognized as divinely ordained,

In the forms of conscience, with its certainty of self, it [moral consciousness] finds the content to fill the former emptiness of duty as well as the emptiness of right and the empty universal will. And because this certainty of self is at the same time



immediacy, it finds in conscience definite existence.  
[*Phenomenology*, 645]

It is this displacement of the postulate of God, which both guaranteed and thwarted the necessity of duty, which expounds the arbitrariness and immediacy of the subjective particular which recognizes only its own immediacy as law.<sup>19</sup>

Conscience as such, is aware that it is directly responsible for its acts; that its duty, of which it is immediately self-certain, is a content that can be realized. It is through conscience that the universal law loses its abstract unity: it is split into the plurality of empirical duties between which the subject must choose on the basis of pure conviction. Thus, conscience turns out to be an even more indeterminate determination of the ethical than pure moral law. Its action is constituted through an awareness of duty which is completely without objective mediation; for each acts on the basis of an 'individual conviction' which cannot determine a universal content. The conscientious individual can justify all of its actions precisely because it can actually justify none of them. As Hegel remarks,

Spirit certain of itself is at rest within itself in the form of conscience, and its real universality, its duty, lies in its pure conviction concerning duty. This pure conviction as such is as empty as pure duty, pure in the sense that nothing with it, no definite content, is duty. [*Phenomenology*, 653]

The moral conscience, by autonomously constituting duty as a particular conviction, determines itself in opposition to the substance of ethical life. This opposition is a 'culture' of self-consciousness: it is an active resistance of subjectivity to the mediations in which law and right have their actuality. The emptiness of Kant's moral law produces a state of inner self-certainty which recognizes no objective necessity: 'In the strength of its certainty of itself, it has the majesty of absolute self-sufficiency, of absolute autarky, to bind or to loose'.<sup>20</sup> It is this absolute self-certainty, and the aporias produced through its activity, which are reproduced in *The Differend's* understanding of ethical necessity. For Lyotard, obligation is a moment of pure subjective conviction



which cannot be actualized or communicated,

Above all, the question, which is so to speak preliminary, is that the request emanating from this entity [the 'addressor', what or whoever this is] be received as though it were a law. The only sign capable of guiding a third party in this is that the addressee is obligated. [*The Differend*, ¶ 164]

The moment of obligation is violated by discourses which attempt to explain and legitimize the uniqueness and contingency of the prescriptive phrase. *The Differend's* transcription of the *Second Critique* as cognitively suppressing the spontaneity it 'cosmologically' attributes to free will, retraverses the phenomenological transition from moral will to conscience. Lyotard's exposition of the moral law as negative in relation to the contingency of linkage and the infinite possibility of differends, discloses the same return to subjective contingency expounded in the dialectic of conscience. His writing of ethical spontaneity ignores the domination of contingent difference presupposed by Kant's critical morality: thus *The Differend's* subjectivization of the 'ethical', fails to recognize the power of the unmediated particular (satisfaction, desire, appropriation and disposal) over the formation of judgements. Hegel's speculative exposition of morality discloses the subjective legitimation of external difference as constituting a 'spiritual animal kingdom' of antagonistic, self-seeking individuals.

The exposition of civil society which Hegel sets out in the *Philosophy of Right*, expounds the necessity of re-cognizing and mediating the subjective particularity of the will. This exposition takes the form of showing that moral autonomy presupposes the 'caprice and physical necessity'<sup>21</sup> which determines abstract self-seeking; and that it is this abstract exteriority and domination of contingent differences which must be mediated through the law of the state. The speculative necessity constituted through Kant's moral law, is of a relation in which self-consciousness recognizes itself in all its particular elements,

The will's activity consists in annulling the contradiction between subjectivity and objectivity and giving its aims and objective instead of a subjective character, while at the same time remaining by itself even in objectivity. [*Philosophy of Right*, ¶28]



Hegel's concept of law as the 'annulling' of the opposition between subjectivity and objectivity, is the realization of the substance of the will. The *Phenomenology* expounds this relation through the forms in which subjectivity misrecognizes the universality of its particular work, satisfaction and desire. It is Lyotard's failure to appreciate this exposition of the representation and misrecognition of difference, which conditions *The Differend's* aporetic account of the relationship of authority and autonomy.

The event of 'Auschwitz' is presented in *The Differend* as demonstration of an absolute heterogeneity of 'addressor' and 'addressee' of the law. The Holocaust is understood by Lyotard as the end of 'obligation' to a rational law which 'situates' the subject as both legislator and citizen of a community. 'Auschwitz' is presented as the end (termination) of the 'transcendental illusion' of community, in which ethical mediation is the object of the law,

it is ... illusory ['after Auschwitz'], in the Kantian sense of transcendental illusion, to suppose a subject substance that would be both a subject of the uttering (even though it is not the addressor in the prescriptive) and the permanence of a self (even though from one phrase to the next it leaps from one instance situation to another). [*The Differend*, ¶155]

The law of the SS is presented in *The Differend* as absolutely resistant to speculative exposition. Its consequences can, for Lyotard, only be attested to by phrasings which 'remember' the uniqueness of Nazism's attempt to 'forget the other' of representational and foundationalist discourses.<sup>22</sup> The attempt to annihilate the physical and historical being of the Jewish people, is conceived as the end of sublation as such: the SS and the deportee disclose a non-relationship of obligation and legislation which is the end of 'metaphysical' identity. 'Auschwitz' however, can only 'block' the abstract 'method' of speculative thought which Lyotard posits in the 'Result' section of *The Differend*. The obligation to phrase the wrong and victimization perpetuated at 'Auschwitz' in disparate, 'micrological' presentations, can be maintained only where speculative exposition is required to produce new forms of sublation. The evil of Nazism's absolute victimization of the Jewish people, is itself a profoundly speculative moment which obligates spirit to judge the violence of



its own distortion. The identity of spirit is produced and reproduced through substantive judgement of misrecognition.

The idea of obligation which Lyotard presents in *The Differend*, situates both Kantian and Hegelian discourses on law, autonomy and justice with the genre of cognition; or representation. Kant's positing of the moral law is conceived as violating the integrity of ethical time through the 'congruence' of the suprasensible realm of human ends. For Lyotard, this 'metaphysical' unity becomes fully deterministic in Hegel's speculative thought: the experience of non-moral contingency (heteronomy) is integrated into a method of positive sublation. Both critical and speculative philosophies are non-ethical in the sense of imputing universal explicability and communicability to the reception of obligation: on Lyotard's reading, both attempt to prescribe the spontaneity of ethical judgement by positing a universality which is produced through the freedom of the will. This conflation of Kant and Hegel under the rules of the cognitive genre however, presupposes the abstraction of pure subjective will from the discourses of law and necessity in which it is embedded. Lyotard can maintain that speculative thinking dominates ethical reception of difference, only by positing an abstract, objectless volition as the 'addressor' of right. Speculatively conceived absolute spontaneity is pure negativity; and it is through the history of positing that ethical judgement and law are mediated in *Sittlichkeit*.

The ideas of right and law which Hegel expounds in the *Philosophy of Right*, are constituted in their actuality through the 're-cognition' of ethical life (*Sittlichkeit*) as the substance of free will,

An existent of any sort embodying free will, this is what right is.  
Right therefore, is by definition freedom as idea. [*Philosophy of Right*, ¶29]

Hegel's concept of the state is a relation of unity through mediation: the individual, constituted in its particularity, re-cognizes its substantive being in the universal. It is in this sense that the *Philosophy of Right* expounds a relationship of authority to obligation which is 'rational': the institutions and



relations of civil society are re-cognized as formative of the subjective particularity which the state must mediate. This mediation however, is never complete; it is always 'posited', and so contradictory of the infinite idea (of the notion) which it attempts to realize. Thus, the authority of the state neither constitutes the 'actual' as dominant over the self-reflection of consciousness, nor determines subjectivity itself as an absolutely negative demand (the *sollen* of duty) ranged against the 'heteronomy' of ethical life,

The crucial point in the Kantian definition of right is the 'restriction' which makes it possible for my freedom or self-will to co-exist with the self will of each and all according to a universal law. ... Once this principle is adopted ... the rational can come on the scene only as a restriction of the type of freedom which the principle involves, and so not as something immanently rational but only as an external, abstract universal. [*Philosophy of Right*, note to ¶29]

Lyotard's reading of Kant attempts to show that the 'spontaneity' of the will, which he postulates as the fundamental premise of the moral law, is ultimately suppressed by the idea of a realm of universal human ends. The infinite possibility of 'linkage', which for Lyotard is the condition of an ethical reception of difference, is excluded by the idea (representation) of congruent finality. It is precisely this positing of unity as a mere 'thought' which for Hegel constitutes the impossibility of critical ethics. The objective relations through which consciousness develops the universality of its work, satisfaction and desire, are excluded from the recognition of moral necessity: critical ethics cannot recognize concrete difference, and reinforces the exteriority of the other in civil society. The truth of self-recognition is not abstractly posited in speculative thought; it is developed through the misrecognition and misrepresentation by which external authority sustains itself. The relationship of state authority and subjective will expounded in the *Philosophy of Right*, recognizes the objective conditions of domination and inequality presupposed by critical ethics. Speculatively conceived, authority and recognition are identical; neither can be adequately conceived without the other,

The state is absolutely rational inasmuch as it is the actuality of the substantive will which it possesses in the particular self-consciousness once that consciousness has been raised to consciousness of its universality. The substantial unity is an



absolute unmoved and in itself, in which freedom comes into its supreme right. On the other hand this final end has supreme right against the individual, whose supreme duty is to be a member of the state. [*Philosophy of Right*, ¶258]

Kant's idea of a 'suprasensible realm' of human ends therefore, which Lyotard presents as the complete 'annexation' of obligation to the cognitive genre, is an abstraction which has its actual significance within the historical development of consciousness toward substantive self-recognition. Within this development, it is the accidentality (contingency) of private possession enshrined in bourgeois property law, which constitutes the work, desire, and satisfaction of civil society, as domination and lack of unity. Thus, by consigning self-consciousness' recognition of its own finitude to the realm of heteronomy, Kant's moral law produces an utterly non-actual ('suprasensible') conception of ethical necessity. The moral law, through its reinforcement of the dominance and inequality of bourgeois property relations, also reinforces the necessity of mediation: the aporias of the 'moral view of the world' show Kant's moral autonomy as infinitely reproducing the finitude and limitation of subjectivity.

*The Differend's* writing of obligation as the spontaneous reception of wrong and differend, reduces political activity as such to the reproduction of the 'transcendental illusion' of community: for if 'prescriptives' cannot be 'transitive' then the normative phrase must 'situate' its addressee within a community of universally obligated and obligating entities. This normativization of prescriptives is presented in *The Differend* as a universal agency of the subject in its reception of an obedience to the law: 'legitimate' authority is deduced from narratives about racial and national origins, divine right, the idea of humanity, historical necessity etc. This 'deduction' of authority from the narratives of identity however, is conceived by Lyotard as the suppression of ethical linkage by representational forms of thinking. The 'annexation' of ethical judgement to legitimate authority discloses this incommensurability: obligation to wrong and differend is immediacy as such,



and cannot be included in normativizing representations,

The aporia of a deduction of authority, or the aporia of sovereignty, is the sign that the phrase of authorization cannot result from a phrase stemming from a different phrase regimen. It is the sign of an incommensurability between the normative phrase and all others. [*The Differend*, ¶203]

For Lyotard the immediacy of ethical time is always unrepresentable within narratives of legitimate authority. The ethical moment, 'this threat, this marvel, and this anxiety, of a "what-is-to-be-linked"<sup>23</sup>, cannot be reduced to the foundational assumptions of a rational humanity, revolutionary proletariat, universal self (*Selbst*) etc. The heterogeneity of the normative phrase, consists in the impossibility of 'deducing' its authorization of prescriptives from other forms of sentences: it is always concerned with the realization of the concept of justice represented in its particular narration of true ethical necessity. It is this attempt to ground obligation in the law of an immanent community, which is presented in *The Differend* as the goal of political discourses, as opposed to the political,

Its [the narrative's] metalinguistic constitution marks the function of authority: to throw a bridge over the abyss between heterogeneous phrases. [*The Differend*, ¶207]

Authority as such subjects the spontaneity of prescription to a concept of justice achieved within a representable idea of community.

For Lyotard, obligation is the spontaneous unity of differend and the necessity of phrasing, which cannot be explained or legitimated through any other regimen. Ethical necessity therefore, is presented in *The Differend* as a sensitivity of thinking to the silence which 'signs' wrong and differend; as the necessity of finding 'idioms' in which to phrase the unphraseable. This ethical 'sensitivity' of thought to the incommensurability of discourses, is suppressed by the normative phrase: the spontaneity of linkage onto the present is excluded through the constitution of an ethical community in which justice is represented as a congruent finality. On this reading, normative phrases, which for Lyotard constitute the transcendental illusion of community, impose a



sanctioned, legal citizenship upon the named individualities who are dispersed throughout a plurality of heterogeneous discourses and phrase regimens. The law as such, is imposed upon individualities who are ontologically dispersed, and which, for Lyotard, have the responsibility of delegitimizing the law.

The law should be respected with humour because it cannot be completely respected, except at the price of giving credence to the idea that it is the very mode of linking heterogeneities together, that it has the necessity of total being. ... The 'people' is not the sovereign, it is the defender of the differend against the sovereign. [*The Differend*, ¶208]

Lyotard's concept of individuality's relation to the law, constitutes a 'culture' of subjective judgement which is rooted in his reading of Kant's *Third Critique*. The critical philosophy's separation of autonomy and heteronomy is reinforced by Lyotard's positing of the subjective moment of taste (the free play of imagination and understanding) as independent of the *Third Critique's* immanent development of finality. However, it is the 'Analytic of The Sublime', with its account of the aesthetic antinomy of representation and conception, that Lyotard takes as the crucial moment of disclosure in Kant's philosophy. For it is here, according to *The Differend's* final 'notice', that the impossibility of 'passages' between different 'genres' and 'phrase regimes' is formulated within the terms of transcendental idealism. For Lyotard, the experience of incommensurability which Kant expounds as the (*a priori*) ground of sublime affection, is the experience of the 'unpresentable' as such: the antinomy of reason and imagination discloses thinking's ethical and political responsibility to its (ontological) experience of heterogeneity. I have argued that this subjectivizing of Kant's aesthetic finality, fails to acknowledge the speculative necessity constituted in the idea of negative pleasure; and that the historico-political problematic which Lyotard abstracts from the 'Analytic of The Sublime', constitutes an aporetic opposition of the subject to the formative actuality (*Sittlichkeit*) in and through which it exists. Lyotard's attempt to expound obligation as a spontaneous reception and origination of difference, fails to acknowledge Hegel's critique of the Kantian subject's negative relation to the law. The Absence of objective recognition which Lyotard abstracts from



moral spontaneity, and which lies at the core of his exposition of the 'Analytic of The Sublime', conditions a concept of judgement which is incapable of giving ethical substance to the other.

The logical determination of this relationship of subjectivity of the law, is expounded by Hegel in the *Science of Logic's* section on 'Limitation and the Ought'.<sup>24</sup> For Kant, pure reason, employed in relation to the world of sensible appearance, cannot be satisfied merely with the process of efficient causality which confronts it; it is concerned to discover the absolute conditions upon which those appearances are founded. It is through this fundamental determination, according to Kant, that pure reason is able to establish its 'boundaries' as implying the existence of an unknowable realm (noumenal, or things-in-themselves) beyond mere appearance. This concept of the 'boundary', which pure reason establishes between phenomena and noumena, is contrasted by Kant to the concept of a 'limit', which is simply a finite gradation within an infinite (mathematical) series that implies no possibility of completion. Kant's idea of the limit, in other words, is the speculative 'bad infinite' which has no substantive actuality; and it is this constant re-establishment of finitude which, for Hegel, is implied in the critical notion of boundary.

The Kantian boundary is the way in which something distinguishes itself from something else; it is the interiorization of its own opposition to the 'other' from which it distinguishes itself. The thing, in this case Kant's moral subject, sustains its self-identity through its opposition to the other: 'it relates itself to itself by knowing itself to be its own non-being'.<sup>25</sup> This is the Kantian limit: the complete displacement of the actual which constitutes the demand of critical morality, the categorical 'ought', as an unrealizable task. The other remains irreducibly exterior to the law of self-determination (autonomy), as it is both the condition and the negation of the critical subject's being for itself. The moral self-consciousness knows itself only as the perpetual absence of satisfaction in its actual desires, wants and satisfactions; and it is this absence, and its aporetic relation to the elements of *Sittlichkeit*, which is reproduced in

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Lyotard's reading of moral obligation.<sup>26</sup>

This 'essential' negative self-relation, is the logical condition of Kant's moral imperative, the 'ought'. Thus, the 'obligation' under which the Kantian subject is placed, constitutes its essence as a simultaneity of being and non-being: the good will has the power of an essential being, pronounced in the 'ought to be', but also posits its own negative, pronounced in the 'ought to be'.<sup>27</sup> This non-being (limit) is momentarily transcended through moral action (the enacting of the ought); but it is only as the non-being constituted by the ought, that it has its moral nature. This perpetual overcoming and recreation of the limit is the essence of the good will; for its adherence to the moral law involves it in an infinite series of negations which relate its negativity to itself. The 'boundary' between the autonomous self and heteronomous causality, which Kant claims is established by the categorical imperative, actually implies the infinite finitude of the limit, from which he wished to distinguish the moral will absolutely.

The ought implies a finitude, or 'non-being', of the subject, which limits its power to the constant re-establishment of its own non-actuality. The critical subject cannot realize its 'being-in-itself-to-be' (the ought to be), precisely because it is the 'ought' and not the 'is'. By presupposing the boundary set upon reason in its theoretical determination of appearances, that is, the positive implication of noumena beyond the phenomena, the *Second Critique* excludes the possibility of a substantive, differentiated recognition of autonomy. Understood as a purely formal demand, the boundary through which the self sustains its identity has no actuality; it is simply a limit, or 'regulative idea', which, as inferior to the actual, merely 'ought to be'.

Kant's concept of duty therefore, is absolutely opposed to the actuality through which the unity of *Sittlichkeit* is made possible.<sup>28</sup> The work, desire and satisfaction of the particular, is reduced in the critical morality to a nullity and limitedness which is completely subject to the categorical demand of the moral

law. The abstract finitude of the particular is set over against its own objective mediation in the law,

But in the world of actuality itself, Reason and Law are not in such a bad way that they only *ought* to be ... any more than the ought is in its own self perennial and, what is the same thing, that finitude is absolute. [*Science of Logic*, 136]

The fundamental concern of this speculative reading of Kant's idea of moral obligation, is to demonstrate the impossibility of an ethical relation founded on the opposition of subjectivity to the objective world. Lyotard's transcription of critical ethics attempts to show that the conjoining (*Darstellung*) of spontaneity and moral necessity expounded in the *Second Critique*, ends up by subjecting the spontaneity of 'linkage' to the domination of cognition (through the idea of a dialogic community of rational individuals). The heterogeneity of 'ethical time' is for Lyotard constituted through the absolute immediacy of prescription; for it is only in its complete abstraction from the necessity constituted in the objective forms of 'Reason and Law', that the subject is receptive to 'obligation' as such. This concept of 'ethical' spontaneity (the 'contingency' of linkage) cannot be objectively differentiated from the logic of the Kantian 'ought': both Kant and Lyotard abstract the ethical demand from the speculative necessity constituted through subjectivity's relation to the objective forms of ethical life in which it is embedded.

Hegel's account of the presuppositions of critical ethics in the *Science of Logic*, has shown that the demand of the moral law, the 'ought', establishes as absolute the negative finitude of the subject. The boundary through which it maintains its self-identity, is actually a 'limit', which constantly returns the subject to the 'non-being' of abstract opposition to the objective world.<sup>29</sup> For Lyotard, Kant's moral law, as a representational form of the 'cognitive genre', must posit a 'true' referent in order to validate its necessity; that is, the idea of a realm of universal human ends. The spontaneity of linkage which Lyotard conceives as the condition of an ethical reception of difference, is distinguished absolutely from every discourse of validation and legitimation. Obligation as



such occurs only as a pure submission to the necessity of phrasing the unphraseable, which is the abstract immediacy of Lyotard's 'ethical time'. The spontaneity which Lyotard expounds of the possibility of the ethical, presupposes the same positing of subjectivity as infinite finitude which underlies Kant's idea of moral self-determination. For by setting the experience of prescription as such beyond objective recognition, that is, beyond the universality of work, satisfaction, and desire, Lyotard constitutes a non-subjectivity which is essentially opposed to the other from which it distinguishes itself.

Obligation is presented in *The Differend* as the immediate unity of a demand (from God, the race, humanity) with obedience: this, for Lyotard, is the general condition of the generic discourses which seek to suppress the contingency of linkage onto the occurrence,

Above all, the question which is so to speak preliminary, is that the request emanating from this entity be received as though it were a law. [*The Differend*, ¶164]

Prescription as such, that is, obligation without conditions, is an 'ethical time' which cannot be represented or communicated through the rules of any generic discourse. The ethical moment as such, is for Lyotard essentially bound up with the unpredetermined reception of the differends that arise from the heterogeneity of discourses and regimen. The ethical, or the spontaneity of thinking's relation to the representation of presence, is the condition upon which the 'legitimacy' of discourses is constantly re-established. This moment of unpredetermined reception is the sensitivity of thought to wrong and differend; for it is only in the pure abstraction of 'ethical time' that the silence of the unphrased (the unrepresentable) can be received.

For Lyotard, the boundaries constituted among generic discourses, are reproduced through a communication (war, or commerce) of ideas, rules and protocols, in which each gives itself the right to appropriate the initiations of the other. It is the immediate reception of the differends which spring from these discourses that constitutes the ethical responsibility of thought: the

occurrence constantly discloses the wrong and victimization 'legitimized' by particular genres, which ought to be phrased. This ethical reformation of generic boundaries however, constitutes the same 'non-being' of subjectivity as the Kantian 'ought';

the ethical genre is the one whose rule is to admit no rule but that of obligation without conditions... [*The Differend*, ¶175]

This 'ethical' determination of generic boundaries however, constitutes the same 'non-being' of subjectivity as the Kantian 'ought'. The truth of Lyotard's conception of the ethical, is that his attempt to determine the boundary as established and re-established through the spontaneity of prescription, cannot avoid the negativity of the 'limit'. For by defining the prescriptive phrase through its opposition to all homogenizing teleologies, or specific genres of discourse, Lyotard produces the ethical as limitation: the 'addressee' of obligation is always returned to its abstract 'ethical time' as the non-being of 'this' particular genre.

*The Differend's* attempt to expound the ethical independently of the concrete elements of *Sittlichkeit*, reproduces the aporias of critical morality. The non-being of the 'addressee' which receives the prescriptive phrase is maintained throughout its activity; it cannot realize its ethical reception of difference in any objective form. Thus Lyotard's transcription of ethical spontaneity, by failing to recognize Hegel's exposition of critical morality, constitutes a subjective culture which is absolutely opposed to the laws and institutions which form it. What this postmodern ethical consciousness thinks and does, is again a question of imposing its own ironic negativity upon the substance of the ethical.

The final part of the *Phenomenology's* exposition of morality, is concerned to show that 'conscience', in its universal uncertainty about the action of the other, comes to depend entirely upon what it is told, that is, upon the language of self-legitimation. Here conscience merely speaks its ethical conviction and does not act: it is the pure unity of self-conviction which dare not sully its

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purity in the world,

This cessation of activity is self-willed impotence, the impassivity of a beautiful soul which will not besmirch its beauty by acting. [*Phenomenology*, 676]

Conscience, as absolute self-conviction, produces the beautiful soul: its incertitude about the other's self-certain activity, produces a community in which each constantly reflects upon its essential divinity. Action in the world is degraded to pure exteriority: what is of absolute importance is the language of legitimation through which each assures the other of the purity of his heart. In contrast to the Kantian moral consciousness, which is the infinite task of negative determination, the beautiful soul is a pure inward satisfaction of subjectivity with its reflection upon all life and spiritual essentiality.<sup>30</sup> The beautiful soul has no self: it is a pure reflectiveness which refuses the objective necessity of acting in the world. As such, it does not move outside the circle of its own self-reflection, and transform its thought into recognition of the being of difference.

The absolute certainty of self thus finds itself, *qua* consciousness, converted directly into a dying sound, a mere objectification of its subjectivity. But this world so created is the utterance of its own voice, which in like manner it has directly heard, and only the echo of which returns to it. This return does not therefore mean that the self is there in its true reality: for the real is, for it, not an inherent being ... but its very self. [*Phenomenology*, 666]

Lyotard's attempt to set the moment of obligation beyond the conditions posited in representational discourses, reduces ethical responsibility to expression of a feeling which is the perpetual other of substantive difference and community. The hypocrisy of the beautiful soul, is its refusal to acknowledge the objective forms into which subjectivity is deployed and transformed through action. Its ultimate confession, is a confession of this hypocrisy; that is, of its self-deception in merging its actual satisfactions and desires into an immediate reflection upon its own divine essence. The beautiful soul therefore, reinforces a hostile accidentality of particular interests: 'each is opposed to the other under the guise of furthering their particular interests as if they could be a universal law'.<sup>31</sup> Lyotard's exposition of ethical time as the



moment of 'obligation without conditions', reproduces this hypocritical relation of subjectivity to the other. The ethical moment can only be articulated as thinking's reception of the non-being of community; that is, as the phrasing of a wrong immediately disruptive of the categories through which community is represented. The ethical language of *The Differend*, which purports to articulate an absolute respect of difference, is originally abstracted from the objective forms through which the being of difference is recognized. Lyotard's account of wrong and victimization as expressible only in 'micrological' accounts of otherness, fails to acknowledge the suppression which is presupposed by ethical spontaneity: a language which legitimates ethical judgement in abstraction from substantive difference, reinforces the domination of subjective particularity and self-seeking.

Lyotard's conception of ethical necessity therefore, fails to move beyond the phenomenological determinations of the beautiful soul. The inner voice, or 'call', through which thought receives its immediate responsibility to the differend, is still a subjective absolute which cannot recognize the objective necessity constituted in the elements of ethical life. The concept of obligation 'without conditions' is related to every generic discourse as a 'law' which cannot be mediated; it is the subjection of objectivity to the 'caprice and physical necessity' of finite will. Thus, the 'disauthorized' experience of incommensurability which Lyotard expounds as the moment of obligation, is a negative power which subordinates the actual to the spontaneity of 'linkage'. As with the 'divine' voice of conscience, the actual motivations of the subjective particular are obscured by a language of ethical integrity which misrecognizes the substance of *Sittlichkeit*.

This account of the unconditioned moment of obligation, from which the objective forms of law, work, satisfaction and desire are excluded as representational 'conditions', is the immediate sensitivity to difference which is at the core of the political problematic worked through in the last two sections



of *The Differend*, 'Genre, Norm', and 'The Sign of History'. For Lyotard, any authority whose conditions are representable through the rules of generic discourse, constitutes a form of heteronomy which is the other of spontaneous linkage onto the occurrence. The possibility of representing freedom and justice is absolutely excluded by the idea of immediate necessity; the forms through which community or ethical life is thought, are conceived as suppressive *a priori*. The political is presented by Lyotard as an activity constantly undermining the legitimacy of established forms and institutions; it is the obligation to phrase the differends which spring from the presence of authority.

*The Differend's* attempt to expound the ethical independently of the concrete elements of *Sittlichkeit*, reproduces the aporias of critical morality. The non-being of the 'addressee' which receives the prescriptive phrase is maintained throughout its activity; it cannot realize its ethical reception of difference in any objective form. Thus Lyotard's transcription of ethical spontaneity, by failing to recognize Hegel's exposition of critical morality, constitutes a subjective culture which is absolutely opposed to the laws and institutions which form it. What this postmodern ethical consciousness thinks and does is again a question of imposing its own ironic negativity upon the laws and institutions which actually form it.

For Hegel, the law of ethical life cannot be stated independently of the discourse of positing, that is, independently of the displacement of actuality expressed in the doctrines of 'being' and 'essence'. The absolute can only be thought as the infinite demand that thinking should re-cognize the finitude of its relation to its substance. The absolute is a demand, or *sollen*, which is both grounded in, and independent of, the structures of abstraction in which it is posited. Hegel's conception of the relationship between law and obligation, is developed through the aporias of 'being' and 'essence' he expounds in the *Logic*, and through the legal and political structures of the *Philosophy of Right*. Speculatively conceived, the political activity of the state is the infinite recognition and re-integration of finite will into the concrete universality of



*Sittlichkeit*: the authority of the law is dispersed throughout and active within each contingent form of knowing and willing.<sup>32</sup> Thus, the relationship of freedom and justice cannot be directly represented: the abstract exteriority of being, which is presupposed by Kant's critical morality, is the disclosure of a positing which opposes subjectivity to the authority of the law. This authority cannot be definitively thought; for it is only through its recognition of the objective elements which emerge in ethical substance, that the law 'is' in its truth: the idea of mediation between objectivity and subjectivity,

the universal ... does not achieve completion except along with particular interests and through the co-operation of particular knowing and willing; and individuals likewise do not live as private persons for their own ends alone, but in the very act of willing these they will the universal in the light of the universal ... [*Philosophy of Right*, ¶260]

The relationship which Lyotard presents between law and the spontaneity of ethical time, posits the former as an immediate being which suppresses the reception of difference and contingency. This suppression however, is the presupposition which Hegel expounds in the *Logic's* account of Kantian morality, 'Limitation and the Ought'. Kant's positing of the moral law is a constant reproduction of subjectivity in its finite, negative relation to the other: it is the exclusion of every objective form from the moral activity of the will,

Duty is an ought directed against the particular will, against self-seeking desire and capricious interest and it is held up as an ought to the will in so far as it has the capacity to isolate itself from the true. [*Science of Logic*, 136]

This positing of law and objectivity as abstractly opposed, is shown to be the complete absorption of subjectivity in its particularity; it is the absolute exclusion of otherness (difference) from ethical recognition. It is this exclusion which is sustained in Lyotard's transcription of Kant's moral spontaneity, an which informs the political problematic set out in *The Differend*. The recognition of substantive difference is excluded by a spontaneity of linkage which constantly reproduces itself as the negative of presence. The law cannot directly represent the substance of freedom; yet without its finite authority, thinking is without satisfaction.



According to Lyotard, ethical thinking 'after Auschwitz' must be satisfied with 'micrological' testimony to the wrong and victimization which is produced through representational, 'foundationalist' discourses. The relationship of law and obligation constituted at Auschwitz is an unsublatable moment of victimization which it is the responsibility of thought not to subsume under representational categories. The law of the SS, which demands only the death of the deportee, and the obligation of the deportee to die, attests to the otherness which representation always redetermines: the mediation of law and self-recognition cannot be salvaged from the 'disauthorization' produced at 'Auschwitz'. For Lyotard, 'the jews' are a '*Factum*' which signifies the responsibility of thought to the phrasing of wrong and differend independently of the being of the law.<sup>33</sup>

It is this abstract demand that thinking should always experience obligation over against the being of the law, which places Lyotard's idea of the ethical within the ambit of Hegel's critique of morality. As has been shown in this section of the thesis, the speculative exposition of critical ethics set out in the *Logic*, *Phenomenology*, and *Philosophy of Right*, are all concerned to show that the concept of a rational law is immanent in the positing of an abstractly self-determining subject. The logical, historical and juridical forms through which Hegel expounds the aporias of a critical ethics, in other words, are the forms which produce the mediatedness of ethical substance (*Sittlichkeit*). Thus, by abstracting Kant's notion of freedom from the ('cognitive') discourse of the moral law, Lyotard expounds the ethical as a pure immediacy which reproduces the aporias of absolute subjective finitude. Rational mediation of authority through the law is still possible and necessary after the event of Auschwitz; for it is only by positing speculative thought as an abstract 'method' of sublation, that Lyotard is able to present the Holocaust as the moment to which thinking is infinitely responsible. The conditions which produced the Nazi slaughter must be recognized as a deformation of the relationship of law and subjectivity which the *Logic* and *Phenomenology* have shown to be necessary. Obligation to



the substance of *Sittlichkeit*, that is, to the law of the state, is the only form in which ethical activity can find satisfaction in the other.

Lyotard's attempt to expound an ethics of spontaneous responsibility to difference, is an attempt to question the very possibility of an ethical politics. The forms and categories through which the concept of community is 'represented' in political discourses, are problematized by Lyotard as suppressive, *a priori*, of the obligation without conditions he abstracts from the *Second Critique*. Judgements which are entailed in the rules of particular discourse cannot be ethically related to difference, as difference has already been excluded through an explicitly communicable necessity. The criticism of this notion of 'ethical time' which I have developed in the present chapter, has shown that it presupposes the same abstract separation and difference as the Kantian moral subject. The speculative exposition which Hegel gives of the relationship of practical cognition to subjective particularity, I have argued, discloses oppositions of law and authority, ethical activity and satisfaction; duty and actuality, which are reproduced *a fortiori* in *The Differend's* presentation of obligation. For Lyotard, 'obligation without conditions', or immediate sensitivity to differends, is the condition of a political problematic in which judgement is presented as a reformatory power originally opposed to every element of ethical life. This abstract politicization of thought, I will argue in the following chapter, fails to recognize the unity immanent in Kant's critical philosophy. Lyotard's presentation of a conditionless obligation constitutes a subjective culturing of judgement which he attempts to validate through the aesthetic moments of the *Third Critique*. The concept of reflective judgement which *The Differend* attempts to abstract from the *Third Critique* however, is embedded in a discourse of aporetic mediations which are incapable of reconciling law and subjectivity. The reflective finality of the *Critique of Judgement*, and Kant's political essays, I will show, necessitates the recognition of work, desire, satisfaction and law as the substantive forms through which difference must be ethically judged.



## Chapter III

## Notes

1. *The Differend*, ¶163.
2. *Ibid.*, ¶174.
3. Lyotard remarks in *Just Gaming*, 'The "you must" is an obligation that is not even directly experienced. Because experience by itself always supposes its description, and thus the privilege granted to the play of the descriptive. And so the "you must" is something that exceeds all experience' [46]. Moral judgement, in other words, is conceived by Lyotard as unrepresentable; the spontaneous origination of the will cannot be described in conceptual terms. Thus, the 'totality of reasonable beings' [93], which Kant posits as the object of moral autonomy, violates the independence it is supposed to represent: thinking is ethically originaive only when it is presented with the contingency ('givenness') of the event. For Lyotard therefore, it is in the 'Analytic of The Sublime', where thinking is left conceptless by the unrepresentability of aesthetic affection, that judgement emerges as ethically receptive to difference: 'The form that it [judgement] will take in the last *Critique*, is that of imagination. An imagination that is constitutive. It is not only an ability to judge; it is a power to invent criteria' [17].
4. *The Differend*, ¶164.
5. Cassirer, in his *Kant's Life and Thought*, remarks that 'where action comes under the idea of autonomy, under the requirement of obligation ... [the] earlier instant is not carried over into a succeeding instant, but instead we take or stand in a non-temporal contemplation, in which we bind past and present into one event as we anticipate the future' [251]. It is this notion of a spontaneous abstraction of practical reason from the (cognitive)

continuum of events in space and time, through which Lyotard attempts to articulate the (ethical) necessity of judgement without concepts. As Cassirer points out in his account of critical ethics however, 'the concept of a rational being ... leads directly to the correlative conception of a community of rational beings in a 'realm of ends' [248-249]: the spontaneity of the will is reason's practical determination of itself over against heteronomous causality. It is the aporias of this opposition which Hegel expounds throughout the body of his work, and which are reinforced by Lyotard's abstraction of free will ('obligation without conditions') from critical ethics.

6. *The Differend*, 122.

7. See the introduction to the *Critique of Judgement*.

8. *The Differend*, 123.

9. In the lecture entitled 'Gaps', published in the collection *Peregrinations: Law, Form, Event*, Lyotard attempts to show that Kant's articulation of the moral law as regulating the pathological desires of the (empirical) self, articulates the constraint and coercion which is entailed in cognitive legislation: 'It being assumed that the will of such a self is the desire for self, the call coming from the law cannot affect it otherwise than by thwarting and dismissing it' [36]. This account of the suppression and coercion in the moral law's negation of desire however, fails to recognize the actual conditions (of inequality) which are presupposed and reinforced by that law. Lyotard's 'ethical' turn to Kant's aesthetic judgement, which 'has nothing to do with the fulfilment of any need whatsoever' [36], simply reinforces the self-seeking of abstract particularity (see chapter four, section two).

10. *Critique of Practical Reason*, 129.



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11. Bennington remarks, 'On Lyotard's reading of Kant, the categorical imperative does not prescribe that one act so as to bring about a community of rational beings, but *as if* the maxim of action were to be a law for such a community. Kant insists that obligation should give rise to a phenomenon in the world, but this passage is not inscribed in the ethical sentence' [*Lyotard, writing the event*, 139]. Kant's notion of the categorical imperative therefore, is conceived by Lyotard as presenting an immediacy of linkage, ie. the 'act as if (your maxim were a law of nature), which cannot be re-presented as cognitively necessary. *The Differend's* concept of 'ethical time', in other words, is the pure spontaneity of thinking's originative power in relation to heterogeneity and difference. The implication of such a reading of Kant, as Lyotard says, 'will return'; although, I believe, it must be speculatively expounded in its relation to Hegel's critique of moral subjectivity.
12. See *Phenomenology of Mind*, 'Spirit certain of itself: Morality', 611-679.
13. Lyotard argues in *Just Gaming* that the finality posited in Kant's critical ethics, discloses the spontaneity of ethical judgement through its freedom from determining ('metaphysical') finality: '[Kantian finality] would be a metaphysics if the finality were presented as a determinate concept. But it is simply one of reason's Ideas. It is a maximization ... not what impels us to judge, but what regulates our judgement' [47]. On this reading, Kant's attempt to bring the moment of obligation within the conceptual totality of cognition, is already sensitive to the impossibility of an ethics of 'congruence': the formal freedom of the will which Kant presupposes in his critical ethics, is a power which must originate its own (ethical) responsibility.
14. Lukacs remarks in *The Young Hegel* that 'the illusion that bourgeois society, in its ideal state, contains no self-contradiction, and that the
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contradictions that actually appear arise partly from social institutions which have been imperfectly transformed into bourgeois institutions, and partly from the imperfections of man, and especially from the surrender to the claims of the senses, of individual members of society' [151]. Thus it is that the 'good will' is abstracted from the concrete life of the individual subject: the moral law is posited over against the actual formative institutions of *Sittlichkeit*. Kant's hypostatization of civil society as the end of moral culture therefore, reinforces the abstract separation and domination actually present in the bourgeois property form: the possibility of 'reconciling' the contradictions of subjective self-seeking, is excluded by Kant's original division of human nature into *homo noumenon* and *homo phenomenon*. It is Hegel's 'engagement' with, and opposition to, this abstract division, which Lukacs rightly identifies as the source of his historico-phenomenological exposition of the relationship between law, subjectivity and ethical life.

15. *Phenomenology*, 417-483.

16. As Gillian Rose remarks in *Hegel Contra Sociology*, 'we are left with the realization of the barbarism of our abstract culture, of how we have reproduced that barbarism by denying the ethical, by fixing (positing, *setzen*) the illusion that we are absolute or pure moral consciousness in our moral law or in the law of our hearts' [181].

17. *Critique of Practical Reason*, 129.

18. *The Differend*, 123.

19. As H. A. Reyburn remarks in his *Hegel's Ethical Theory*, 'In place of a will purged of all sense and devoted only to the pure form of duty, we have the living concrete will of the subject, full of latent content ... ready to spring to life and assimilate any material presented to it by some objective situation'



[178]. Speculatively conceived, in other words, conscience is the realization of duty; it is the absolute opposition of concrete will to the substance of ethical life.

20. *Phenomenology of Mind*, 628.

21. *Philosophy of Right*, ¶182.

22. See Heidegger and “the jews”, section 8.

23. *The Differend*, 126.

24. *Science of Logic*, 131-137.

25. *Ibid.*, 137.

26. Gillian Rose remarks that, ‘understanding makes a boundary into a limit because it makes thought superior to actuality and says that thought can only be an ought to be, inferior to actuality. In this ways an untrue and contradictory relation to actuality is maintained’ [*Hegel Contra Sociology*, 191].

27. See *Hegel Contra Sociology*, ‘Beyond the Bounds of Morality’, 185-192.

28. Charles Taylor makes a fundamental mistake in his exposition of the relationship between the Hegelian notion of *Sittlichkeit*, and the Kantian idea of *Moralität*. He remarks that “The crucial characteristic of *Sittlichkeit* is that it enjoins us to bring about what already is .... Hence ... there is no gap between what ought to be and what is, between *Sollen* and *Sein* .... In *Moralität* the opposite holds. Here we have an obligation to realize something which does not exist. What ought to be contrasts with what is’ [*Hegel*, 376]. This is a misrecognition of the speculative nature of the

relationship between state and civil society. For Hegel, the concrete universality of the law is always posited; it is always articulated through forms which are recognized as inadequate to its concept. Thus, the activity of spirit in the *Rechtstaat* retains the *sollen* of *Moralität* in its activity; although the object of this activity is now the mediatedness of the universal (the idea). The absolute cannot be thought outside the discourse of positing.

29. As Stanley Rosen remarks in his *G. W. F. Hegel*, 'practical desire ... is "unself-conscious" about its self-centred consciousness. Unobstructed by theoretical presuppositions, it throws itself upon the world in order to satisfy itself. Hence it regards itself as actual and the world as non-actual' [252-253]. Hegel appropriates this Kantian idea of practical reason as an activity which is constantly seeking satisfaction; although the infinite (indefinite) progress which Kant attributes both to scientific and historical development, demands mediation with the abstract finitude it constantly re-determines. Thus the good as such is split into autonomous practical and theoretical 'realms' which Kant expounds in the *First* and *Second Critiques*: there is no unity, and each form opposes and contradicts the other. Thus for Hegel, the development of world history is the development of practical reason's re-cognition of objective forms in which it is actualized: "This is what Hegel means when he says that, in degrees of emptiness depending on a stage of world history, the rational is actual' [254].
30. As Hyppolite remarks in his account of the 'beautiful soul', 'this self-consciousness has lost its consciousness; the object that appears to it is no longer distinct from itself' [*Genesis and Structure of Hegel's Phenomenology of Spirit*, 516]. Self-consciousness, in other words, has no cognition of substantive difference: it acknowledges only the immediate certitude of its own transparency.
31. *Hegel Contra Sociology*, 180.



32. Marcuse's claim that '[Hegel's] political philosophy surrenders society to nature, freedom to necessity, reason to caprice', and that it 'mirrors the destiny of the social order that falls, while in pursuit of freedom, into a state of nature far below reason' [*Reason and Revolution*, 218], fails to recognize the phenomenological necessity through which bourgeois individualism is constituted. His analysis of the state authority expounded in the *Philosophy of Right*, reifies the power of civil society as a destructive, disintegrative force which must be restrained by the negative power of the state. For Marcuse, the individuals who exist in civil society, 'exist only as private owners, subjects of fierce processes of civil society, cut off from common interest by selfishness and all it entails' [*Reason and Revolution*]. The authority of the *Rechtstaat* however, develops through the concrete (universal) forms of work, satisfaction and desire: it cannot be abstracted from the relations of subject and object through which its actuality is formed. Thus, the *Rechtstaat* is the form in and through which the subjective self-seeking of civil society is recognized and mediated: it has authority over it, but only as the re-cognition of its universality. For Hegel, the contingency of bourgeois property relations and subjective self-seeking is the finitude with which the state is always afflicted.

33. See Heidegger and "the jews", section 1.

## Chapter IV

### The Politics of Judgement

In chapter one of my thesis, I argued that Lyotard's claim to discriminate in speculative thinking an abstract method dependent upon the presupposition of a 'metaphysical' self (*Selbst*), distorts and misrepresents the spirituality of Hegel's writing. *The Differend's* transcription of speculative phenomenology as a set of rules whose necessity is finally 'blocked' at 'Auschwitz', fails to recognize that the radical alienation of law and obligation which produced the holocaust, must be understood through the concrete historical contradictions which produced National Socialism. Nazism, in other words, necessitates speculative re-cognition of violence and abstraction; and as such, it cannot put a definitive end to the speculative critique I have opposed to Lyotard's ideas of 'presentation' and 'obligation' in chapters two and three.

In chapter two, I have argued that Lyotard's attempt to transcribe the necessity of immediate 'presentation' from the (phenomenal) experience of the critical subject, re-presents the lack of unity inherent in the critical subject as a 'juridical' play of discrete faculties. This 'litigation' (of transcendental faculties) is understood by Lyotard as disclosing judgement as the activity through which legitimacy is established; although in terms of *The Differend's* transcription of critical epistemology, judgement remains within the 'genre of cognition'. The very possibility of this re-presentation of the transcendental subject however, is dependent upon Lyotard's failure to recognize the historical conditions necessary to the emergence of self-consciousness: his rupturing of Kant's 'transcendental unity of apperception', presupposes discrete interior realms of (juridical) 'representation', which are posited as independent of their historico-political actuality and significance.

The critique of Lyotard's notion of 'ethical time' developed in chapter three, showed that the concept of obligation articulated in *The Differend*, is violently abstracted from Kant's critical morality. For Lyotard, the necessity of the moral



law excludes the 'ethical' reception of difference (differends): its presupposition of a congruent realm of human ends, is transcribed as fixing the subject in a relation to the other which is infinitely exclusive of its difference. This reading of critical morality, I have argued, through its representation of the critical subject as suppressive of the immediate freedom of the will, fails to recognize the lack of unity through which the aporias of pure practical reason are constituted. The contradictions which Hegel sets out in his exposition of critical morality (i.e. the insubstantiality of pure practical will, its reinforcement of abstract self-seeking and the infinite redetermination of subjective finitude), are reproduced, *a fortiori*, in Lyotard's account of the immediacy of 'ethical time'. This speculative exposition of Lyotard's attempt to situate the necessity of critical ethics within a limiting and suppressive genre (cognition) however, is incomplete. For the ethical, political and philosophical questions which Lyotard raises in *The Differend* disclose their Kantian genealogy most explicitly in the transcriptions of 'reflective judgement' set out in 'Genre, Norm' and 'The Sign of History'.

In the first section of this final chapter therefore, I will expound speculatively the violence of Lyotard's abstraction of aesthetic sensibility from the concept of finality; and show that the subjectivity which the judgement of taste presupposes, is part of the necessity made explicit in the transition from subjective to objective notion. The second section of chapter four is concerned with the question of politics and community which arise from Lyotard's reading of the 'Analytic of The Sublime'. I will show that the relationship between 'the political' and Kant's exposition of the sublime which is set out in *The Differend*, presupposes and reinforces the critical philosophy's opposition of subjectivity and objectivity. Lyotard's idea of thinking's obligation to difference (heterogeneity, incommensurability) in other words, radically abstracts self-consciousness from recognition and misrecognition of its actuality; and his appropriation of the 'experience' of heterogeneity from the *Critique of Aesthetic Judgement*, retains the aporetic immediacy of pure subjective conviction.



## Section One

### Reflective Finality And The Logic of Subjective Judgement

Kant's *Critique of Judgement* is the completion of his philosophy of subjective faculties. The realms of theoretical and practical reason which he delineates in the *First* and *Second Critiques*, posit distinct *a priori* relations between the mental and cognitive faculties of the subject: understanding (*Verstand*) and reason (*Vernunft*) are transcendently related to their particular objects, i.e. phenomenal cognition and the faculty of desire. It is this autonomy of theoretical and practical reason which constitutes the necessity of a 'critique' of reflective judgements; for neither of the cognitive faculties, understanding and reason, is capable of producing unity in the experience of the subject. The determinate judgements which proceed from the universal concepts of the cognitive understanding (through the schemata) and the autonomy of the moral law (through the type) cannot sufficiently reduce the contingency permitted by the general (*a priori*) conditions of experience. Both produce an 'other' to which its particular analytic unity is opposed.

The transcendental necessity of the cognitive understanding is expounded by Kant in the *First Critique*, as providing the general conditions for nature as a possible object of sense; while the *Second Critique* expounds the conditions under which the Idea of freedom can become regulative of the faculty of desire. Neither of these faculties unify the activity of reason with its object. The understanding cannot immediately determine the occurrence of 'each particular thing in nature'; its laws are always universal and require articulation into the apparent contingency of phenomena. Practical reason, on the other hand, can only determine the Idea of freedom in relation to particular empirical desires and actions; it cannot actualize its necessity in the realm of phenomena. The transcendental principle expounded in the *Third Critique* is the unity of these opposed and empirically contingent realms.

The critique of this unifying activity is an attempt to establish a

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transcendental principle by which experience can, in the absence of determinate concepts, represent a conformity of nature to the faculties of cognition. The *a priori* necessity which is at stake in Kant's *Third Critique*, is the capacity of the subject to proceed from the empirical contingency of cognitive experience, to the reception of a non-cognitive universal in which the contingent becomes necessary, 'final'. It is only through this 'reflective' experience of empirical appearances as final, as embodying the intention of an absolutely self-determining understanding, that cognition can maintain its objective determination of experience. By presenting nature under the 'principle of finality', reflective judgements provide a ground of possible empirical laws which is neither a concept of nature nor of freedom, 'but a unique (subjective) principle of unity',

This [reflective] judgement, ... is equipped with an *a priori* principle for nature, but only in a subjective respect. By means of this it prescribes a law, not to nature (autonomy) but to itself (heautonomy), to guide its reflection upon nature. This law may be called *the law of the specification of nature* in respect of empirical laws. It is not one cognized *a priori* in nature, but judgement adopts it in the interests of a natural order, cognizable by our understanding, in the division which it makes of nature's universal laws when it seeks to subordinate them to a variety of particular laws. [*Critique of Judgement*, 25]

That the power of reflective judgement constitutes an independent faculty of the critical subject, is for Kant vouchsafed by the necessity of finality to the determination of a unified cognitive experience. For without judgement's 'reflective' attribution of an aesthetic or teleological finality to particular representations, the realm of appearances determined by the faculties of understanding and intuition alone, would present 'an endless multiplicity of empirical laws, which are yet contingent so far as our insight goes i.e. cannot be cognized *a priori*'.<sup>1</sup> Kant's account of reflective judgement however, is related to the objects of cognitive experience only as a moment of subjective attribution. The 'finality' through which contingent appearances are reappropriated by cognition's principle of conformity to law, cannot be represented through concepts: reflective judgement's discrimination of a unity of cognition and intention in experience, is cognitively undeterminable. This transcendental



association of the (non-cognitive) Idea of finality with reflective judgement therefore, is a subjective necessity constituted through cognition's inability to actualize its own *a priori* principle, i.e. universal conformity to law. It is this cognitive unrepresentability of the 'object' of judgement (the Idea of unity), which for Kant constitutes its *a priori* necessity to cognitive experience,

our judgement makes it imperative upon us to proceed on the principle of the conformity to nature to our faculty of cognition, so far as that principle extends, without deciding - for the rule is not given to us by a determinate judgement - whether bounds are anywhere set to it or not. [*Critique of Judgement*, 28-29]

The substance of Kant's *Critique of Judgement* is concerned to establish the independence of two distinct moments in which this unrepresentable unity is manifest. In the first of these moments, the aesthetic, it is the independence of the formal representation of the object from the desire to 'use it for the purpose of cognition', which constitutes the subject's discrimination of finality. The feeling of pleasure which is immediately coupled with such a representation, does not derive from the possibility of subsuming the immediate apprehension (intuition) of the object under a particular concept. This purely formal pleasure in the object, is for Kant referable solely to the subject,

In such a case the pleasure can express nothing but the conformity of the object to the cognitive faculties brought into play in reflective judgement, and so far as they are in play, and hence merely subjective, formal finality of object. [*Critique of Judgement*, 30]

Kant's critique of the aesthetic, taken in general, is an attempt to establish the reality of a pure, disinterested affection. The *Third Critique's* account of the relationship between aesthetic judgements and the mental faculty of 'pleasure and displeasure' maintains that if the object represented in imagination (the faculty of intuition's *a priori*) presents in it form, an immediate unity of imagination and understanding, then this representation of the object must be regarded as 'final'. When the form of an object occasions pleasure merely through reflection upon it, that is, independently of cognitive or moral concepts, the pleasure resulting from this representation is for Kant both subjective and universal. The possibility of aesthetic affection is grounded in



the faculties of human cognition; although its occasion is always a matter of particular reflective judgements,

This is why judgements of taste are subjected to a critique in respect of their possibility. For their possibility presupposes an *a priori* principle, although that principle is neither a cognitive principle for understanding nor a practical principle for the will, and is thus in no way determinant *a priori*. [*Critique of Judgement*, 32]

Teleological judgement, or the 'logical representation of finality in nature', on the other hand, is not concerned with the immediate apprehension of finality in the form of the object. The empirical ground of this moment of reflection belongs to the theoretical part of philosophy; for the determination of the object as embodying a 'natural end', requires the subsumption of particular instances under a general concept. Teleological finality is not conceived through a principle independent, *a priori*, of the aesthetic. For although its judgement does not immediately discern the unity in nature to which 'pleasure-displeasure' is spontaneously responsive, the concept of a natural end organizing the contingent appearances of an object, depends upon the reception of an empirical (temporal) multiplicity as unified in its form. It is the same subjective *a priori* principle which produces the judgement of taste, that prepares the understanding 'to apply to nature the concept of an end (at least in respect of its form)'.<sup>2</sup> Teleological judgement, in other words, reduces the contingency of particular appearances through reflection upon their formal finality; and it is this subjective apprehension of unity in multiplicity which contributes to the understanding's cognitive determination of objects,

The teleological is not a special faculty, but only a general reflective proceeding, as it always does in theoretical cognition, according to concepts but in respect of certain objects of nature, following special principles - these, namely, of a judgement that is merely reflective and does not determine objects. [*Critique of Judgement*, 36]

For Kant therefore, reflective judgement is the faculty through which 'the legislations of Understanding and Reason' are joined, without either losing its independence. Theoretical cognition of nature determines a 'boundary' between



the 'sensible' world of conditioned appearances, and the 'supersensible' realm of 'things-in-themselves' which is beyond cognitive apprehension. It is this boundary which is presupposed by Kant's critical ethics: moral actions are expounded in the *Second Critique of Reason* exercised against the heteronomous causality of appearances. The faculty of judgement, by its attribution of aesthetic or teleological finality to the realm of cognition, conjoins the realms of practical and theoretical reason. For in discerning a formal unity of cognition with its objects, reflective judgement provides the 'supersensible substrate' implied in Kant's doctrine of experience, with a 'determinability' that implies freedom (autonomy) as the finality manifest in nature. The demand that 'causality by freedom' (the 'noumenal' activity of the will), ought to be able to take effect in the world is met, albeit subjectively, by teleological and aesthetic judgements of finality,

Judgement, by the *a priori* principle of its estimation of nature according to its possible particular laws provides the supersensible substrate ... with determinability through the intellectual faculty. But reason gives determination to the same *a priori* by its practical law. This judgement makes possible the transition from the realm of the concept of nature to that of the concept of freedom. [*Critique of Judgement*, 38].

Reflective judgement's attribution of finality to nature, constitutes the incorporation of its apparently contingent particular laws, into a thoroughgoing self-determination (freedom, autonomy) of transcendental understanding. It is the subjective, unrepresentable idea of God which guarantees the unity of reason and understanding, while leaving them 'objectively' irreconcilable.

In the third of *The Differend's* 'Kant notices', Lyotard attempts to show that the critique of the faculty of judgement discloses a 'critical activity' through which the *a priori* necessity of reason and understanding is completely dispersed. Lyotard's claim is that the objectivity of cognitive experience is entirely dependent upon this critical activity; and that as such, it is only through the act of 'judging' that objects can be legitimately included either within the realm of moral autonomy, or heteronomous causality. The transcendental faculties which Kant deduces from the nature of cognitive experience, are presented in *The Differend* as establishing their legitimate



objects ('referents') through a process of constant 'litigation'. Each faculty, on this reading, appropriates forms and principles established in the others, in order to validate its particular 'objective' determination,

In point of fact, though, judgement already and necessarily intervenes each time that it is a question of saying 'this is the case', in order to validate a phrase, or in order therefore to present an object as permitting this validation. [*The Differend*, 130]

For Lyotard, judgement's want of a determinate object, and the absence of a specific set of rules to which its activity is permanently 'annexed', disclose it as the critical activity presupposed by Kant's subjective faculties. It is only in its non-predetermination, that thinking is 'free' to phrase the legitimacy/illegitimacy of 'established' discourses. *The Differend's* reading of the *Third Critique* therefore, presents judgement as the 'faculty of the milieu'<sup>3</sup>; the spontaneous power through which the legitimacy of genres is constantly called into question by the current phrase<sup>4</sup>,

This is the faculty [i.e. judgement] which has enabled the faculties and territories to be delimited, which has established the authority of each genre on its island. And this it was only able to do thanks to the commerce or war it fosters between genres. [*The Differend*, 131]

It is this idea of judgement that is at the core of Lyotard's notion of politics, or 'the political'. His claim is that it is only through the constant re-formation of 'legitimacy' through spontaneous sensitivity to the occurrence, that thought becomes 'politically' concerned with its own freedom. And so it is judgement 'freed' from transcendental necessity, which Lyotard posits as the condition of an ethical politics.

The significance of Kant's *Critique of Judgement* for the political problematic which Lyotard presents in *The Differend*, is its admission of 'passages' between the transcendental faculties of the subject. The possibility of representing objects through faculties which did not originate them, that is, of appropriating 'rules' of linkage and formation; for Lyotard discloses the primacy of 'critical activity' (judgement) over the transcendental deductions of the *First* and



*Second Critiques.* The moment of 'symbolic' representation expounded by Kant in the *Third Critique*, is read by Lyotard as disclosing judgement's power to discern an analogy between the feeling of disinterested pleasure accompanying aesthetic finality, and the feeling of respect accompanying obedience to the moral law. The rules which allow verification of beauty or morality, in other words, retain their difference in this 'critical symbolism'; for it is only through judgement's production of the 'analogon' that ethics and aesthetics establish their objective legitimacy,

Symbolization, then, does not occur through a substitution of objects, but through permutations of instances ... what allows the critical judge to say, This is the case - or convicting the exhibit - is not necessarily a fact. [*The Differend*, 132-133]

By attempting to 'supplement' the realms of practical and theoretical reason with a subjective power of (aesthetic and teleological) discrimination, Kant is unable, on Lyotard's reading, to sustain the *a priori* necessity of those realms. The transcendental unity of Kant's critical faculties is conceived as an abstraction from the temporality of the 'passage': the symbolic forms ('analoga') through which judgement establishes and re-establishes legitimacy, discloses thinking's political freedom in relation to determinate forms of authority.

The 'passages' which Kant supposedly allows in the *Critique of Judgement*, are set out in *The Differend* as moments in thought's spontaneous relation to generic discourses. Judgement, on Lyotard's reading, cannot be subordinated to the rules of the 'cognitive genre'; the subjectivization of its principle proposed as the solution to the 'antinomy of judgement', is conceived as compounding the abstraction of critical 'faculties' from the (undeterminable) necessity of judgement. The antinomy of judgement which Kant expounds in the *Third Critique*, is between the mechanical determination of nature, and the idea of a production of effects which can only be explained in terms of finality. The antinomy of mechanical and rational causality however, is for Kant founded upon a failure to recognize the distinction between reflective and determinant judgements. The reflective judgements through which particular empirical laws are represented as conforming to a final end, do not 'supersede' the determinate



judgements of the understanding through which knowledge of nature is actually constituted. For the independence of reflective judgement, in its attempts to unify the heterogeneity of particular laws, is a purely subjective principle (a natural law cannot be known cognitively) which guides the discovery of unity in mechanical productions. There is an antinomy of judgement only so long as the faculty of reflective judgement is conceived as a principle which is in opposition to, and seeks to take the place of, the heteronomous causality of the understanding. For Lyotard, the concept of 'nature' constituted through the faculty of understanding, sets the 'critical activity' of reflective judgement to work: 'supplementation' of phenomenal causality by the idea of an 'end', is produced through the latter's symbolic representation of the former. The rules of formation and linkage 'originated' in the cognitive understanding, are re-presented through an autonomous judgement ('passage') disclosing the differend between the discourses of mechanism and finality,

if the activity of discerning, ... or the attention paid to differends at work in the critique, can take on this supplementarity by invoking the objective finality of nature, it is because it (critical activity) is itself a means set to work by nature in order to prepare its final end. [*The Differend*, 134]

The 'supplementarity' of reflective judgement to the rules of cognition, cannot re-establish the *a priori* of the critical philosophy's realms and territories. The differends which reflective judgement discerns among them in its reception of finality, are the sign of a heterogeneity which is always-already not determinately existent.

On Lyotard's reading of the critical philosophy, it is in the treatise on 'Perpetual Peace'<sup>5</sup> that Kant discloses and negotiates the indeterminacy and spontaneity of thought's political activity. The freedom which is presupposed in Kant's exposition of the moral law, cannot be cognitively determined; and it is this indeterminacy which ought to provoke each particular state into spontaneous judgement of the other's political constitution. Perpetual peace among republics is sustained by this 'agitated' condition of reason; war ought always to be forestalled by judgement's preservation of its own spontaneity.



This apparently spontaneous independence of thinking from the 'transcendental illusions' of community and subject however, is for Lyotard the point at which Kant commits judgement completely to the demands of an 'absolute addressor'. After opposing his 'agitated', cosmopolitan judgement to the laws and institutions of particular states, Kant regulates what Lyotard understands as thinking's critical activity, through the idea of nature promoting universal right.

In answer to Kant's question, 'What does nature do in relation to the end which man's own reason prescribes him as a duty?'<sup>5</sup>, Lyotard contends that it acts as a 'supplement' to the 'legal' (national) existence of the subject. 'Nature', according to this reading, is the non-cognitive 'addressor' which perpetually re-establishes the legitimacy of relations between states. It is the idea of nature as an ethico-teleology, which affectively 'signifies' the necessity of judging in the absence of laws. On Lyotard's understanding, Kant's cosmopolitan judgement has always already received its goal from an ethically purposive nature,

One cannot pass judgement on signs without presupposing such an intention, be it problematically? That is, without pre-judging that an unknown addressor not only delivers but also addresses them to us to be decoded. [*The Differend*, 135]

The notion of a 'guiding thread' of finality, for Lyotard entails a generic 'pre-judging' which dominates receptiveness to the event, and the differends which spontaneously arise from it. Kant's 'acceptation' of a purposive moral nature is transcribed in *The Differend* as just such a domination; for political judgement ought constantly to rephrase the incommensurability of genres without reference to any predetermined necessity,

whatever acceptation is given to the idea of nature, one's right of access is only through signs, but the right of access to signs is given by nature. Not even a denaturalized nature and signs of nothing, not even of postmodern non-teleology, can escape this *circulus*. [*The Differend*, 135]

The ethical and the philosophical are presented in *The Differend* as 'non-generic' genres, whose rules of formation and linkage cannot be predetermined. Both are related to the event as an openness, whose spontaneity is absolutely



distinct from and incompatible with generic ideas of historical finality. An ethical politics is for Lyotard dependent upon the preservation of this non-predetermined judgement throughout the 'community' of particular individuals. His concern is that the 'transcendence of the I', that is, its abstraction from the discourses of totalization which constitute the community as a determining agent ('addressor'), should be active as an absolute ethical demand. Lyotard's reading of Kant's essay on 'Perpetual Peace' has attempted to show that the idea of a natural teleology suppresses the autonomy of judgement; that this concept, even when understood only as a 'guiding thread', presupposes an immanent purposiveness addressed to the subject. Kant's idea of finality overpowers the critical judgement disclosed in the introduction to the *Third Critique*; for even in its 'reflective' form, teleology places the 'political' under the control of an historically constituted necessity (i.e. the development of humanity's 'moral culture').

Lyotard's ideas of community and the nature of the political, I will argue, presuppose an abstractly subjectivizing account of Kant's *Critique of Aesthetic Judgement*. My claim is that by positing aesthetic harmony (the 'Beautiful') and vacillation (the 'sublime') among the 'critical faculties' as the experience of the incommensurable as such, Lyotard fails to acknowledge the aporias constituted in Kant's immediately subjective reception of finality. In the account of the 'Analytic of The Beautiful' which Lyotard develops in *The Differend's* third 'Kant notice', and his essay '*Sensus Communis*', he attempts to show that Kant's judgement of taste discloses a principle of autonomy which cannot be encompassed by any particular discourse. The 'unrepresentable' free play (harmony) of understanding and imagination is posited as the 'experience' of incommensurability: the judgement of taste is read as the spontaneous response of thinking to the irreducible difference of the discourses. Lyotard's abstraction of the immediate indeterminacy of thought which is the condition of Kant's judgement of taste, is compounded in his 'political' appropriation of the judgement of the sublime. The 'Analytic of The Sublime' is understood as disclosing the impossibility of 'passage' between the critical faculties of



imagination and reason. The unrepresentability of the idea of freedom, which Kant expounds as the ground of sublime affection, is transcribed by Lyotard as the 'obligation' under which the critical activity of thought is placed. The political, as it is presented in *The Differend*, is thinking's infinite capacity for phrasing the unphrased ranged against realms of 'established' necessity. It is this conception of the relationship between judgement and freedom, that is the presupposition of Lyotard's idea of 'the political'. I will argue that his transcription of the *a priori* conditions of Kant's aesthetic finality, constitutes a political problematic which abstracts subjectivity from the objective conditions of its being and activity. The 'heterogeneity' of postmodern culture cannot displace the substantive forms of work, satisfaction and desire through which self-consciousness develops: and it is only through recognition of these forms that 'rational' political judgement can be made.

Kant's account of aesthetic finality in the 'Analytic of The Beautiful', maintains that if the object presented in imagination presents, in its form, an immediate unity of apprehension and cognition; this object must be regarded as 'final'. When the form of an object is determined as occasioning pleasure merely by reflection upon it, that is, as independent of cognitive determination; the pleasure attending such a representation is deemed subjective and universal: 'The object is then called beautiful; and the faculty of judging by means of such a pleasure (and so with universal validity) taste'.<sup>6</sup> For Kant, the judgement of taste is made without a concept; and yet at the same time is a demand for universal assent. It is through his reading of Kant's 'antinomy of taste', that Lyotard sets out the relationship of judgement to 'presence', or 'establishment', which informs his notion of the political. The 'antinomy of taste' is expounded by Kant as a confusion of 'determinate' and 'indeterminate' concepts. The apparent contradiction which follows from the claim that judgements of taste are both subjective and universal, is resolved when it is acknowledged that the universality of aesthetic judgements bears upon the 'supersensible' conditions of knowledge, rather than upon phenomenal experience itself. Aesthetic 'finality' is concerned with the transcendental possibility of knowledge. The



concept through which aesthetic judgement receives the object as an end in itself, cannot be deduced from the conditions of phenomenal knowledge; its 'object' is the 'supersensible substrate' which is presupposed as the necessary ground of cognitive experience. Thus, for Kant, the judgement of taste does have universal validity; for the concept upon which aesthetic pleasure bears (in both the beautiful and the sublime) is the 'indeterminate' possibility of knowledge as such. Kant remarks 'that the removal of the antinomy of aesthetic judgement ... compels us, whether we like it or not, to look beyond the horizon of the sensible, and to seek in the supersensible the point of union of all our faculties *a priori*'. Kant's *Third Critique* therefore, is an attempt to reduce the apparent contingency of empirical phenomena. As such, the *a priori* principle of reflective judgements must produce a harmony of the critical faculties through which experience is made possible. For if pleasure in the beautiful is brought about by a harmonization of understanding and imagination, then the demand of universality asserted by aesthetic judgements, is grounded in the transcendental conditions of there being knowledge at all. For Lyotard, aesthetic pleasure, by 'signifying' the necessity of reflective affinity to knowledge in general, discloses aesthetic judgement as a '*sensus communis*' which demands the assent of everyone; 'the *sensus communis* called forth by taste is a sign "lying in" the subject of an idea which relates to that subject'.<sup>7</sup>

This inaccessibility of the principle of aesthetic judgement to the cognitive knowledge it guarantees, is, for Lyotard, the crucial point in the 'Analytic of The Beautiful'. For Kant, the 'transcendental unity of apperception' which underlies phenomenal representations, can only be grasped as an analytic unity present in time. This is the 'I' of cognition's determinate judgements. Aesthetic pleasure, on the contrary, is produced by a synthesis which is reflective, not determining; it is occasioned by '... the conformity of the object to the cognitive faculties brought into play by reflective judgement'.<sup>8</sup> On Lyotard's reading, this conformity of the object and its cognition, is understood as an 'equalling out'<sup>9</sup> of the faculties of imagination and cognition, in which it is the



very impossibility of aesthetic pleasure being 'annexed' by the understanding, which is the condition of its possibility. Kant's notion of the judgement of taste, for Lyotard discloses the spontaneity (conceptlessness) of thought in relation to the immediate presentation of the phrase,

When understanding tries to take over this 'affiancing' [the simultaneous 'defiance' and confidence 'among faculties sustained by the activity of judgement] it can only determine the schematism, only the form which is already determined and prepared for the concept. And it can only attribute the determinate synthesis to the determining faculty, that is to itself. [*Sensus communis*, 21]

Lyotard's reading of Kant's judgement of taste, attempts to show that the critical subject is dispersed throughout its heterogeneous acts of reflection, and that it cannot be thought as a determinate unity. The feeling of pleasure which accompanies representations of objects as aesthetically final, is produced, for Lyotard, by a spontaneity of judgement which cannot be subsumed under determinate concepts. The *sensus communis* which he abstracts from Kant's aesthetic judgement, is affective; it is conceived as a universal feeling that accompanies the irreducible 'experience' of heterogeneity,

Feeling isn't transcribed in the concept, it is suppressed without relief (*Aufhebung*). This sublation is the presupposition of the concept. [*Sensus communis*, 22]

The communicability of this abstract '*sensus*' therefore, cannot be 'determined' as an object of cognitive or dialectical knowledge: for Lyotard, the dispersal of the subject through judgement's immediate sensitivity to difference, produces community only as an analogy with the 'euphony' (harmony, affinity) of the faculties which is the ground of Kant's judgement of taste. The *communis* of Lyotard's idea of *sensus communis*, 'is only in principle communicable'<sup>10</sup>; it 'is' only in the sense of the constant reformation of legitimacy,

Thus it [*sensus communis*] is a region of resistance to institutions and establishment, where is inscribed and hidden what happens 'before' we know what it is and before we want to make it in to anything at all. [*Sensus communis*, 24]

For Lyotard, judgement is the political response of thinking to the experience



of difference as such: it is an 'unpreparedness' which produces legitimacy in momentary, contingent forms, which are always-already subject to the *sensus communis*. This 'milieu' of critical activity, spontaneously re-forms and re-re-forms the discourses which 'situate' the subject: it has no history and no substance, subjectivity remaining 'unrepresentably' dispersed through contingent realms of legitimacy. For Lyotard, thinking is responsible only to the unforeseen, the undetermined, the unphrased; and so an ethical politics can only take the form of expounding the necessity of judgement's spontaneous reception of the event, Lyotard's *Arrive-t-il?*

In his discussion of the role of 'narratives' of legitimation in *The Postmodern Condition*, Lyotard attempts to show that it is the 'little narratives' which threaten accepted scientific conventions, the produce and reproduce 'legitimate' scientific practice. His claim is that the 'inventive imagination'<sup>11</sup> of the scientist is always already opposed to 'grand narratives' (ontological legitimations); and that consequently, the aim of scientific discourse as such, is not consensus, but dissensus ('paralogy'). This is the basis Lyotard's critique of Habermas' *Theory of Communicative Action*,

[Habermas'] second assumption is that the goal of dialogue is consensus. But as I have shown in the analysis of the pragmatics of science, consensus is only a particular state of discussion, not its end. Its end, on the contrary, is paralogy. [*The Postmodern Condition*, 65-66]

This claim however, is itself a transcendental (non-speculative) assumption - of 'paralogy' as the goal of discourse. Lyotard's development of the idea of dissensus ('heterogeneity') in *The Differend's* notion of political judgement, retains a posited opposition to actuality which is profoundly non-ethical. By abstracting self-consciousness' knowledge from the concrete formations (and deformations) of its work, satisfaction and desire, Lyotard's political problematic is left with no substantive concept of difference or necessity.

The conceptions of politics and community which Lyotard develops in *The Differend's* section 'Genre, Norm', and in his essay '*Sensus communis*', are informed by the idea of 'obligation' which is speculatively criticized in chapter



three. 'The political' is understood by Lyotard as entailed in the possibility of the ethical: the pure, subjective spontaneity of thinking in relation to established realms of legitimacy (genres), is the end, or non-end, of political discourse. The fundamental problem with this conception of politics, stems from the lack of objectivity which Lyotard privileges in his reading of the *Critique of Judgement*. By abstracting the non-cognitive (undeterminable) moment of aesthetic finality from the body of Kant's *Third Critique*, and attempting to establish its reception as the disclosure of genuinely 'critical' judgement, Lyotard forecloses on the possibility of an ethical politics. The exposition of judgement set out in the *Science of Logic*, and in the *Encyclopaedia of the Philosophical Sciences*, and the place which this occupies in the development of the Notion as such, constitutes a profound critique of Kant's subjectivization of finality, and, *a fortiori*, Lyotard's notions of politics and community.

For Hegel, the 'faculty' of judgement is necessitated by Kant's abstract separation of practical and theoretical reason. The 'ought' which is the determining contradiction of the critical philosophy, is produced and sustained through the separateness of the subjective and objective moments of the Notion. Kant's account of judgement as a transcendental condition of experience, i.e. as subjectively unifying the contingency allowed by the faculties of cognition, is expounded in Hegel's logical writings as a necessity belonging to the concept of cognitive experience as such. The *a priori* principles of the moral will, and of nature as an object of cognition, can be (non-aporetically) established only in the actual mediations of the notion: it is only through an objective recognition of the good as idea, that moral autonomy can become ethical,

The defect of Kant's philosophy consists in the falling asunder of the moments of absolute form ... there is lacking the negative, the abrogation of the 'ought', which is not layed hold of. But thought and thinking had come once for all on the absolute requisite that could no longer be set aside. [*Lectures On The History of Philosophy*, 478]

It is with judgement therefore, that Hegel begins his exposition of the Notion.



The transition from the 'Doctrine of Essence' to the 'Subjective Notion', is necessitated by the exclusive determination of 'nature' through heteronomous causality. The 'reciprocity' of the discrete moments of cause and effect, cannot realize the 'freedom' inherent in external causality; and so it is judgement, as the form through which this relation becomes one-sidedly subjective, that initiates the Notion's actual mediation of the aporias of being and essence. The concept of judgement belongs to the 'Idea of thought as such'<sup>12</sup> its true necessity, the mediation of subjectivity and objectivity, universal particular and individual, freedom and necessity, is actualized in the absolute idea.

It is the subjective side of the notion which is developed through judgement and syllogism; while it is through the necessity inherent in teleology, that the mediations of the Idea (life, cognition, volition, absolute idea) are produced from the categories of objectivity (the object). Judgement is a necessity which is produced, in its subjective form, by the reciprocal negativity (implicit freedom), constituted at the end of the Doctrine of Essence. This necessity, from the point of view of the Notion, is universal; for judgement is the form in which its particularity and individuality are specified and re-specified. The mediated differentiation through which judgement fulfils Hegel's claim that it is 'all things'<sup>13</sup> however, is unrecognized in the subjective notion. It is through the aporias of its subjective forms, that the activity of judgement develops the actual mediations constitutive of the being (unity) of its subject,

Far from occupying the same level, and being of equal value, the different species of judgement form a series of steps the difference of which rests upon the logical significance of the predicate. [*Encyclopaedia Logic*, ¶171, note]

Subjective judgement develops substantive differentiation through its qualitative, reflective, and necessary forms, ultimately taking the notion, or concrete universal, as its content. This universal is initially determined as simple assertion, whose 'want of right' is made explicit in the problematical judgements which set each 'asserting' judgement against the other. The universal is non-immediate; its concept requires an 'inference' of the conformity



of the individual to its particular genus. Attribution of both moral and aesthetic 'finality', requires that the individual subject of judgement have its articulation with the (relative) universality of the genus made explicit. It is this explicitude which the 'apodeictic' judgement attempts to express,

All things are a genus in an individual actuality of a particular constitution: And they are finite, because the particular in them may and also may not conform to the universal. [*Encyclopaedia Logic*, ¶179]

It is in the form of the syllogism that subjective thought develops the relationship of differentiation (individuality and particularity) to the concept of identity (the universal). Apodeictic judgement is the form in which the unity of the Notion is initially posited; the particular is put as the mediating term through which individual and universal are brought into unity. Further specification of the unity of distinctions 'consists in the fact that the universal and particular also occupy this place of mean'.<sup>14</sup> This again paves the way for the passage from subjectivity to objectivity. The universal mediation which is developed through the 'qualitative' and 'reflective' forms of the syllogism, produce a necessity which cannot remain purely subjective, but which must pass over into the object as such. The syllogism's final form articulates the necessity of the universal to the constitution of individuality and particularity: the 'disjunctive' moment in which the universal becomes both the totality of its differentiated elements, and a concrete individuality, is produced through the 'categorical' and 'hypothetical' forms in which the individual and particular disclose their universality.

Speculatively conceived, critical aesthetics belongs exclusively to the notion's subjective side. The aesthetic form of Kant's reflective judgement is founded on, and reproductive of, the separateness of judgement and notion; that is, on a lack of mediation among the forms through which the actual is thought. Judgement's inability to reconcile the universal, which it apprehends in qualitative, reflective, necessary and notional forms, with particularity and individuality (differentiation), is the logical condition of Kant's immediately



subjective reception of 'finality',

Because Kant places it [the unity of universal and particular] in the subject, it is limited, and as aesthetic, it ranks even lower, in as much as it is not the unity as Notion. [*Lectures*, 470]

Kant's idea of aesthetic finality constitutes a complete abstraction of objectivity from cognition. By fixing the identity of subject and predicate, which is the content developed in the logical forms of judgement, exclusively in the subject, the judgement of taste 'isolates' the two realms (practical and theoretical reason) that it claims to unite.<sup>15</sup> Subjectivity receives the harmony of its faculties (imagination and understanding) only as a pleasurable feeling of unity in multiplicity, which is beyond cognition as such. This critical 'Idea' of the aesthetic, abstracts subjectivity from the logic of its own re-cognition: the critical subject's discrimination of the beautiful, is, in principle, always the rejection (negation) of the 'matter' which speculative logic discloses in its aporetic, autonomous development. Kant's critique of the aesthetic, expounds an absolute rejection of the actual: the syllogistic forms which 'set judgement in reality' and develop the mediation of subject and object into its higher categories, are excluded by the formality of taste.

The possibility of an ethical politics is, for Lyotard and Hegel, dependent on the idea of 'subjectivity' which is 'immanent' in the *Third Critique*. On Lyotard's reading, it is aesthetic judgement which discloses the subject as dispersed throughout the 'events' of its spontaneous linkage. The faculty of judgment is abstracted from the *a priori* principles of cognitive experience, and set out as the power ('critical activity') in which the 'realms' of Kant's philosophy are established and re-established as legitimate. For Lyotard, reason and understanding have no transcendental necessity; their *a priori* principles are always-already established through acts of judgement, or an inner 'litigation' of the faculties.

The power of Hegel's reading of the *Third Critique*, is that it does not abstractly privilege or exclude either of the forms of finality through which Kant expounds the faculty of judgement. *The Differend's* 'forensic'



understanding of Kant's critical subjectivity is founded upon exactly this kind of abstraction. For in trying to rid 'critical activity' of its attachment to the goal of a unified experience, Lyotard externally privileges the aesthetic moment in which judgement is based only upon the formal, subjective reception of unity. The *Critique of Judgement* comprises the aesthetic and teleological forms of reflective judgement; it expounds the reception of finality in both formal and theoretical moments. Theoretical cognition of nature as an 'object of sense' cannot determine a unity of appearances *a priori*: its constitution of the object produces a 'boundary' between things-in-themselves and phenomena. Judgement is the faculty through which noumenal and phenomenal causality is (subjectively) mediated; for it provides a substrate of unity in particular empirical laws which, for Kant, is 'merely reflective and does not determine objects'.<sup>16</sup> It is in the notion of teleology, or nature's thoroughgoing purposiveness, that the *Third Critique* discloses the necessity immanent in reflective judgement: that the objects of practical and theoretical reason (rational freedom and phenomenal nature) are 'unreal' abstractions which must be brought into differentiated identity.

The fundamental significance of Kant's idea of reflective judgement, is expounded in the subjective notion. The contradiction inherent in each of the moments of Hegel's logical exposition of judgement, is the separateness of subjectivity and actuality. Qualitative, Reflective, Necessary, and Notional forms of judgement, are all, as Lyotard maintains of Kant's judgement of taste, 'only in principle communicable'<sup>17</sup>: it is not until the activity of judging is 'set in reality' by the syllogism, that subjective thought begins the transition to objectivity, i.e. begins to think itself as constitutive of actuality. Communicability as such, is possible only where thinking has universally recognized itself in the content mediated through its logical categories. This recognition is realized in the forms of objectivity that are produced from the development of the syllogism; teleology, the highest of these forms, is the category in which the concrete unity of notion and objectivity (the Idea as such) is made explicitly necessary.



The development which occurs through the logical elements of teleology leads to the realization of finality as such: it produces the fulfilment of the mediation immanent in the *Critique of Judgement*. The 'End' is the form in which the mediatedness of the notion is brought into a negative relation with the immediately objective. Its initial form is subjective: the end appears as posited in complete independence of the objectivity it is supposed to unify. 'Teleology', Kant maintains, 'is merely reflective and does not determine objects'.<sup>18</sup> As the identity running through all its 'specific characters' however, the end cannot remain in an abstract relation to the content it unifies. The 'reflective' self-identity which Kant attributes to 'natural ends', cannot be maintained in a category, teleology, whose purpose is the unification of objectivity,

The End ... is a contradiction of its self-identity against the negation stated in it i.e. its antithesis to objectivity, and being so, contains the destructive activity which negates the antithesis and renders it identical with itself. [*Encyclopaedia Logic*, ¶204]

The end, is the 'single particular or exclusive individuality' which maintains itself throughout the production of all its particular effects.

The logical transition of the end into the mediatedness of the Idea takes place through three determinate stages. The first of these is the 'Subjective End', in which the content of particular aims and intentions is brought into commerce with an immediate objectivity. The second is the 'End in the Process of Accomplishment', where the object is constituted as 'means' to the realization of particular ends. It is through the utilitarian necessity inherent in the second moment that the individual becomes constituted as the 'negativity in which the being of the object is characterized as wholly and merely ideal'.<sup>19</sup> The final moment of the syllogism, the 'End Accomplished' however, is still unable to unify end and object. Finite subjectivity is not concrete with its objective; it requires the mediation of the immediately appropriated object (the means) to unify its end with a material objectivity presupposed'.<sup>20</sup> The end projected 'outwards' onto an objectivity to which it is related externally.



This estrangement of subjectivity and actuality is abrogated in the realized end only insofar as the two are no longer thoroughly 'one-sided': the syllogism of the teleological relation 'specifies' the subjective notion as the power which realizes itself in objectivity through the immediately appropriated object. The subjective notion emerges as the internally self-conversant form (the identity of the end) which appropriates specific objects for definite purposes. At this stage, the end is the implicit unity of subjectivity and actuality; for while the mediation of the appropriated object (found 'ready to hand') is required, objectivity remains exterior to subjective judgements,

We have got, therefore, only a form extraneously impressed on a pre-existing material: and this form, by reason of the limited content of the End, is also a contingent characteristic.  
[*Encyclopaedia Logic*, ¶211]

The unity implicit in the designated 'end' however, has made the fusion of the concrete law of the (subjective) notion with the actual, an absolute necessity. For by removing all form characteristics from the object as such, the end is the category through which the notion 'coalesces' with itself, and becomes the exclusive and explicit progenitor of its content. This dynamic unity through the preservation and abrogation of otherness, is the speculative Idea.

Lyotard's idea of autonomous judgement, thought's 'critical activity', depends upon a misrecognition of the relationship between communicability and cognition. The idea of nature through which the unity of contingent appearances is received in the *Third Critique*, cannot, on Lyotard's reading, permit the critical activity of spontaneous judgement. Kant's 'logical' representation of finality, unlike the aesthetic, requires the subsumption of particular instances under a general concept. The 'certain element of contingency in the constitution of our understanding'<sup>21</sup> acknowledged by Kant, is the condition of the judgement which 'reflectively' conjoins finality with the possibility of objective experience. This subsumption, on Lyotard's reading, is always-already 'prepared' by the rules of the cognitive genre. The 'special principles' which teleological judgement employs, are communicated to critical



subjectivity by an 'Idea' (addressor) which cognition cannot determine i.e. an absolutely unified and purposive nature. For Lyotard the critical subject is no longer dispersed throughout the contingent moments of aesthetic judgement. It is unified (homogenized, dominated) by the commands of the purposive nature ('addressor') entailed in the 'rules' of cognitive representation.

The idea of 'paralogy' as the end of scientific discourse, which Lyotard expounds in *The Postmodern Condition*, is developed in its ethical significance in his discussions with Jean-Loup Thébaud, published in English as *Just Gaming*. In the section entitled 'Majority Does Not Mean Greater Number But Greater Fear', Lyotard attempts to show that the Kantian notion of a 'regulative Idea' entails the proposition of a 'congruent' finality in which particular moral, juridical, and political judgements are unified: 'In Kant, the Idea that will serve as a regulator for the discussion of justice is that of a unity or totality. In morality, to a totality of reasonable beings; in politics the unity of humanity .... For Kant the idea of justice is linked to that of finality'.<sup>22</sup> The necessity propounded in *Just Gaming* that we abandon this idea of congruence and put in its place the idea of "discrepancy" ... of a politics in which justice is not placed under a rule of convergence, but rather divergence'<sup>23</sup>, is developed in *The Differend* through Lyotard's reading of Kant's aesthetic finality. The analytics of 'The Beautiful' and 'The Sublime', are conceived as disclosing a spontaneous critical activity of thought which is infinitely sensitive to the unrepresentability of ideas. The idea of 'minority', which Lyotard posits as the other of 'congruence' in *Just Gaming*, cannot be found complete in Kant's account of either the Beautiful or the Sublime. *The Differend's* attempt to demonstrate the necessity of thought's experience of heterogeneity (the 'incommensurable' as such), violently abstracts the critical subject's (aporetic) indeterminacy from the *Critique of Judgement*. Speculative exposition of the *Third Critique* recognizes the aporias produced through Kant's subjectivization of finality, and constitutes a demand for substantiation of the critical philosophy's ideas of totality and mediation.



This reading of the *Critique of Judgement* as the (aesthetic) disclosure and (teleological) loss of spontaneous judgement, reveals the misrecognition of the relationship of subjectivity to actuality which is the precondition of *The Differend's* political problematic. By abstracting the formality of the aesthetic from the substantive development of cognition 'immanent' in the *Third Critique*, Lyotard forecloses on the possibility of recognizing (mediating) difference as ethically and politically significant. Kant's notion of teleology postulates the idea of the concrete; it is the point at which the reflective judgement comes closest to recognizing the unity of notion and reality immanent in the realms of practical and theoretical reason. Teleological judgements unify subjectivity (notion) and reality through their organization of the particular, contingent appearances which must be brought under determinate judgements of the understanding. The immediate formality of the aesthetic is developed into an immanently objective mediation through the idea of purposive nature. Kant, however, fails to recognize the necessity of the mediation inherent in the concept of natural finality; he insists that thinking 'remain at what is one-sided, at the very moment [it] is passing out beyond it'.<sup>24</sup> The concept of the political which Lyotard abstracts from Kant's idea of aesthetic judgement is afflicted, *a fortiori*, with the lack of a concrete, communicable recognition of difference and particularity.

Hegel's 'Subjective Logic', in which mediation inherent in the forms of 'judgement' and 'syllogism' is developed, expounds a law which is identical with its content. This law, which is both universal and particular, is never 'determined' by the abstract categories in which it is posited: it is the negative activity which abrogates (mediates) the abstract forms which it produces. The subjective form of the Notion establishes abstraction as both the precondition and impossibility of 'determining' a law in which universal and particular are concretely identical. The development which Hegel expounds in the object, is a fusion of the subjective notion's concrete law with actuality, which necessitates the self-transparency of the Idea. Life and teleology develop the reciprocity inherent in objectivity; and it is through this mediation that the absolute



negativity of the law is active in ethical life (*Sittlichkeit*). The unity of the 'good' and the 'true' which is expounded in the Idea as such, is the infinite activity of the Notion re-cognizing itself in, and differentiating itself from, the abstract forms in which it is posited. All speculative exposition is exposition of the want of identity between actuality and its specific, limited content,

The absolutely concrete is mind - the notion when it exists as notion distinguishing itself from objectivity, which not withstanding the distinction still continues to be its own. [*Encyclopaedia Logic*, ¶213]

The development of the notion through its abstract forms into the negative relation of self-conversance, is the development of absolute communicability. 'Judgement' and 'syllogism' are the categories in which this communicability appears to subjective thought; each form develops the mediatedness of its content to the point where its exteriority to the 'object' can no longer be sustained. 'Mechanism', 'chemism', and 'teleology' develop this mediatedness in an objective form which cannot remain estranged from the higher 'subjective' forms of the idea. The whole of this development, from the notion's pure subjectivity, to the re-cognition of its own infinitely negative self-relation in the forms of the Idea, is the realization of difference (otherness) as identity i.e. as recognizably and communicably part of the universal,

Such is the explicit or realized inseparability of the functions of the notion in their difference - what may be called the clearness of the notion, in which each distinction causes no dimness or interruption, but is quite as much transparent. [*Encyclopaedia Logic*, ¶164]

Read speculatively, Kant's assertion of the possibility of synthetic judgements *a priori*, is inconsistent with his claim that content is given externally to the cognitive understanding. The syntheses which the *Transcendental Analytic* attempts to determine as prior to phenomenal experience, are produced through forms which speculative logic shows to be inseparable from content (substance) as such. The *Third Critique* is an implicit recognition and immanent development of this content: aesthetic and teleological judgements 'reflectively' acknowledge the mediatedness



necessitated by the aporias of practical and theoretical reason. Lyotard's understanding of the political is conditioned by a violent abstraction of the aesthetic from the *Third Critique*; an abstraction which makes difference the activity and responsibility of subjective mind. The political problematic which follows from this move, is a perpetual rejection of the finite difference through which the Absolute Idea re-cognizes (communicates with) itself. The desire, work, and satisfaction of real individuals, cannot be recognized as necessary to the substance of ethical life: necessity is dispersed into contingent 'feelings' for the 'unphrased', for the 'silence' of the differend.

By expounding the displacement of actuality presented in the critical philosophy as the precondition of the notion's negative self relation, Hegel discloses the necessity of 'thinking' an ethical life which is not assimilated to, or reinforcing of, the domination inherent in external separation and difference. The notion is the notion of a law which is absolutely identical and non-identical with a content which it has produced; it is the infinite re-cognition of its own identity in difference. The *Phenomenology* has shown how the development of 'natural' consciousness is the history of misrecognition, in which difference and identity appear in abstract, non-spiritual relations to each other. The idea of judgement set out in *The Differend* presupposes the same lack of mediation which the *Phenomenology* sets out in its exposition of moral consciousness (see chapter three), and which Kant attempts to reconcile in the *Third Critique*. By abstracting the reflective judgement of taste from its cognitive preconditions, Lyotard's notion of a spontaneous 'critical activity' of thought, fixes difference as a pure subjective contingency which is never actual.

Politics, and the question of ethical political judgement, for Lyotard, 'consists in the fact that language is not language, but phrases, or that Being is not Being, but There is. It is tantamount to being that is not. It is one of its names'.<sup>25</sup> Nothing is ever present as such; there is only the immediacy of the current phrase which has always-already engendered the question of linkage and differend, that is, of non-predetermined judgement. 'The political' is



presented in *The Differend* as the other of being and establishment; it is the constant return to the temporal present as undetermined possibility of linkage and differend. Every genre is political in the sense that its finality is formulated both through differends with other genres (i.e. with other strategies for gaining control of the current phrase), and through the 'internal' disputes by which artistic, literary, technical, etc., 'success' is established and re-established,

Everything is political if politics is the possibility of differend on the occasion of the slightest linkage. Politics is not everything though, if by that one believes it to be the genre that contains all genres. It is not a genre. [*The Differend*, ¶192]

On Lyotard's understanding, political judgement cannot proceed from any 'generic' determination of reality: it is a spontaneous activity which ought to establish and re-establish 'realms of legitimacy' in the absence of ontological presence (being).

The notion of ontological presence (being) is expounded in *The Differend* as the basis of a politics of positive good (the just society, absolute ethical life) which suppresses the heterogeneity of the event. On Lyotard's reading, the *Phenomenology* presents a relationship of state and the differentiated elements of ethical life, whose development presupposed a metaphysical self (*Selbst*) which excludes the (ethical) reception of difference. This reading of speculative politics is an elaboration of Lyotard's remark on Hegel's phenomenological 'method' in *The Differend's* section on the operation of the 'Result'.<sup>26</sup> It represents the misrecognition of self-consciousness' development as finite spirit, as an homogenization of (historical) events which are absolutely distinct from the presence (being) of the state in ethical life.

The historical development of subjectivity which Hegel sets out in the *Phenomenology*, does not presuppose the self (*Selbst*) as a metaphysical identity. Absolute knowledge is a '*Resultät*' only in the sense of its being concretely produced and sustained by the aporias of misrecognition, and their displacement of self-consciousness' actuality (work, desire and satisfaction). For Hegel there is neither a 'natural beginning' nor a 'utopian end' to history; spirit



knowing itself is subjectivity's recognition of the 'elements' in which its relationship to the infinite is both realized and unrealizable. In absolute knowledge, the abstract moments through which natural consciousness misrecognizes itself, become identical with the recognition that the substance of spirit is concrete with its historical differentiation. Historical events do not come to an end with this recognition; it is merely that contingency and particularity are re-cognized (judged) in relation to the totality of subjective and objective conditions which produce them, that is, the actuality of the historical form in which they appear.

Ethical political judgements proceed from the unity of the constitution with the difference and particularity which constitute ethical life. As the 'permanent, underlying mean in which individuals have and receive their fulfilled reality, intermediation and persistence'<sup>27</sup> the state does not, as Lyotard maintains, constitute the absolute suppression of difference, particularity an ethical judgement. The concept of right (*Recht*) which Hegel expounds in the *Philosophy of Right*, is the activity of concrete mind, or 'substantial will', in relation to the subjective moments in which it is both actual and non-actual. The realization of subjective willing in the 'objective freedom' of the notion does not suppress the 'volition of particular ends'<sup>28</sup>; these 'ends' constitute the actual particularity and difference through which the authority of objective mind is recognized. Absolute knowing, as it is actualized in the *Rechtstaat*, is not the oppressive 'being' of a determined and determinate authority; it is the infinite activity of spirit cognizing and re-cognizing, judging and re-judging, its appearance in the substance of ethical life.

Political judgement is always passed on the 'relatively' ethical; on the externally mediated contingency of civil society (or the forms of *Sittlichkeit* which develop in other nation-states). The unity of this 'reflective' self-recognition with substantive will is the infinite task of the state; it must constantly reunify the subjective formation produced by external necessity, with substantive will. Neither the state nor the idea is absolute as such; both



are infinitely 'afflicted' with finitude. The state's deliberation on and actualization in the law, always involve a non-recognition which 'ought' to be integrated into its 'permanence'. Rational authority can never have done with the contingent forms of subjectivity; for the contingency of self-consciousness' differentiation can only be re-cognized politically in its concrete relations to the substance of ethical life.

## Section Two

### The Politics of The Sublime And The History of The Ethical

The spontaneity of thought which Lyotard presents in *The Differend* and '*Sensus Communis*' as resistance to institutions and establishment, depends upon abstraction of the aesthetic from the totality of Kant's exposition of judgement. The critical philosophy's separation of autonomy and heteronomy is reinforced by Lyotard's positing of the subjective moment of taste (the free play of imagination and understanding) as independent of the *Third Critique's* immanent development of 'finality'. However, it is the 'Analytic of The Sublime', with its account of the aesthetic antinomy of representation and conception, that Lyotard takes as the crucial moment of disclosure in Kant's philosophy. For it is here, according to *The Differend's* final 'notice'<sup>29</sup>, that the impossibility of 'passages' between different 'genres' and 'phrase regimes' is formulated within the terms of transcendental idealism. For Lyotard, the 'experience' of incommensurability which Kant expounds as the (*a priori*) ground of sublime affection, is the experience of the 'unpresentable' as such: the antinomy of reason and imagination discloses thinking's political responsibility to its (ontological) experience of heterogeneity. I will argue that this subjectivizing account of Kant's aesthetic finality, fails to acknowledge the speculative necessity constituted in the idea of negative pleasure; and that the historico-political problematic which Lyotard abstracts from the 'Analytic of The Sublime', constitutes an aporetic opposition of the subject to the formative actuality (*Sittlichkeit*) in and through which it exists. The differentiation which Lyotard posits as absolutely heterogeneous and incommensurable, can only be truly expounded by self-consciousness' misrecognition of its (universal) work, desire and otherness.

The negative pleasure of Kant's sublime affection is produced through the impossibility-necessity of representing ideas in imagination (*Vorstellung*). This unrepresentability, which Lyotard privileges in his exposition of the political, presupposes the abstract separation of understanding and imagination



(*Verstand* and *Vorstellung*) posited in the *Critique of Judgement*. In the 'Analytic of The Beautiful', this separation is expounded as a 'harmonious play' of the faculties which is purely subjective in its reception. It is this aesthetic 'suspension' of thought between the contingency of affection and the necessity of cognition, which Lyotard reads as disclosing judgement as the 'milieu' of legitimation which never makes its 'passage' into any particular genre. In the 'Analytic of The Sublime', the separation of understanding and imagination is productive of a feeling of 'pleasure-displeasure' which is the result of the imagination's inability to find a direct representation for the Idea of freedom,

In a literal sense and according to their logical import, ideas cannot be presented. But if we enlarge our faculty of empirical representation; reason inevitably steps forward, as the faculty concerned with the independence of the absolute totality, and calls forth the effort of the mind, unavailing though it be, to make the representation of sense adequate to this totality. This effort, and the feeling of the unattainability of the idea by means of the imagination in the interests of the mind's supersensible province, and compels us to think nature itself in its totality as a presentation of something supersensible, without our being able to effectuate this presentation objectively. [*Critique of Judgement*, 119]

Lyotard's understanding of Kant's judgement of the sublime - 'the elevation of nature beyond our reach as equivalent to a presentation of ideas'<sup>30</sup> - is of an experience of incommensurability as such: it is the disclosure of judgement as a 'critical activity' in a permanent state of 'agitation' among different genres of discourse and phrase regimes.

Kant's exposition of the sublime in the *Third Critique* however, is not an original (*a priori*) reception of incommensurability; it is conditioned by a positing of imagination and understanding as abstractly separate. The 'reflective' reconciliation of subject and object which Kant expounds in his idea of the sublime, presupposes the *First Critique's* positing of understanding and sensible affection in a relation of abstract opposition. The *Third Critique's* concept of a sublime vacillation between pleasure in the capacity for ideas, and pain at their unrepresentability, is possible only on the presupposition of an 'experience' produced through the domination of concept (*Verstand*) over intuition (*Vorstellung*). The Kantian subject, in its *a priori* exclusion from the



content of phenomenal representation, can recognize itself only in its infinite failure to represent nature as a self-determining totality. Critical philosophy's abstract separation of understanding and intuition forecloses upon the possibility of re-cognizing substantive freedom. Thus, the relation of the subject to the constitution of objectivity expounded in the 'Analytic of The Sublime', is the *Third Critique's* most explicitly aporetic moment: the object, nature as totality, is disclosed as thinkable only through mediation of concept and intuition, sense and idea, which Kant posits as impossible *a priori*. The empirical reflection through which sensible affections are presented to the faculty of Ideas, posits an external relation of thinking and actuality: each empirical predicate 'appears' as part of an infinite series which never discloses the substance of subjectivity,

The predicate in this judgement no longer inheres in the subject; it is rather *implicit being* under which the individual is subsumed as an accidental. [*Science of Logic*, 645]

The speculative development which is immanent in the *Third Critique*, is a substantiation of the relationship between subjectivity and actuality. Kant's account of the sublime is the point at which the 'ordinary *raisonnement*'<sup>31</sup> which keeps things abstractly separate, encounters the necessity of 'thinking' that separation, that is, of mediating abstract difference. In the introduction to the *Critique of Judgement*, Kant remarks,

the part dealing with aesthetic judgement is essentially relevant, as it alone contains a principle introduced by judgement complete *a priori* as the basis of its reflection upon nature. [*Critique of Judgement*, 35]

The principle of reflective judgement, is for Kant disclosed in the uncognizable harmony of understanding and intuition which conditions the judgement of taste. In the 'Analytic of The Sublime', the estrangement of *Verstand* and *Vorstellung* appears to reason, 'the faculty concerned with the independence of the absolute totality'<sup>32</sup>, as a demand for mediation of the separateness which conditions aesthetic finality.

The vacillation of judgement between pain at the inability of imagination to



present ideas, and pleasure at reason's capacity for them, constitutes an absence of (objective) 'finality' which the *Third Critique* attempts to preserve in the concept of teleology. As a concept however, teleology cannot leave the empirical content it organizes as the object of 'reflective' judgements. The necessity entailed in the idea of natural ends is the mediation of actuality with subjective knowing. It is in its determination as 'means' to the realization of particular ends, that the object moves beyond its 'unessentiality' for subjective self-determination: as means the object becomes 'within itself the mediation of the end in the object itself'.<sup>33</sup> Finally, through the category of mechanism, the object is sublated under an end which is itself an object: the exteriority of the object is redetermined through the syllogism of its mediation. This redetermination is the '*last result of the external end relation*'<sup>34</sup>; it is a 'spontaneous sublation of external objectivity' which demands the notion's negative (spiritual) relation to the totality of its posited conditions. The precondition of Kant's aesthetic finality, that is, the abstract separateness of subject and object, of concept and intuition, is necessarily sublated in the concept of teleology: 'reflective' judgement cannot sustain the estrangement of thought and actuality upon which its 'reflectiveness' is premised.

Lyotard's failure to acknowledge the aporetic structure of Kant's idea of the sublime, and the contradictions entailed in its historico-political 'significance' as 'enthusiasm', is fundamental to his transcription of political judgement as immediate negativity. The presupposition of Kant's philosophical history, that is, the history of humanity's 'improvement', is his aporetic conception of the sublime. The critical subject, which the *First* and *Second Critiques* attempt to establish as epistemologically and practically active in relation to sensible affection, emerges from the 'Analytic of The Sublime' in a state of indeterminate agitation which can find no substantive satisfaction. The Idea of freedom, as the presupposition of the abstract moral law, is placed permanently beyond representation. The subject's negative pleasure in its constant reproduction of the 'limitedness' of the will (Kant's concept of moral nature is in principle a formal opposition to 'heteronomy'), is the condition of historico-



political judgement's discernment and 'signification' of moral improvement.

For Kant, the moral nature of humanity is disclosed in reason's 'practical' capacity to determine itself independently of immediate affections and desires. The historical development of this 'formal subjective capacity'<sup>35</sup> for choosing one's own ends independently of inclination, is a development of humanity's 'culture',

The production in a rational being of an aptitude for any ends whatever of his own choosing, consequently of the aptitude of a being for his freedom is culture. [*Critique of Teleological Judgement*, 96]

Reason, as the faculty of Ideas *a priori*, is 'distressed' by the chaos of empirical history and the apparent lack of improvement in humanity's moral nature. It is offended by its inability to find confirmation of the will's autonomous development of 'culture'. Kant remarks that 'we can scarcely help feeling a certain distaste on observing [that] ... despite the apparent wisdom of individual actors here and there, everything as a whole is made up of folly and childish vanity'.<sup>36</sup>

Kant's solution to this antinomy, that is, of empirical reality's contradiction of reason's expectation, is to postulate a purposive nature as a 'guiding principle' [*ibid*] for historical inquiry. Instead of trying to deduce the improvement of humanity's 'culture' from the chaos of empirical history, Kant assumes the idea of that improvement as a 'guiding thread' for historical enquiry. The historico-political judgement whose concept Kant expounds in his political writings, is 'reflective': it evaluates particular events in the absence of determinate concepts; judging them 'as if' they disclosed an objective development of subjective 'culture'.

As the totality of rational beings, 'humanity' can develop its potential for 'culture' (the making over of nature and will) only through the constitution of 'civil' and 'cosmopolitan' societies. The improvement of human nature therefore, is disclosed in and to judgements that discern the possibility of such



civilizing formations in the 'formlessness' of empirical history. Such judgements signify improvement of moral culture both in the possibility they project (cosmopolitan federation of states), and in the very fact of their contemporary enunciation. Historico-political judgement as such '... does not merely allow us to hope for human improvement; it is already a form of improvement in itself, insofar as its influence is already strong enough for the present'.<sup>37</sup>

The 'critical' evaluation which Kant expounds in his political essays, posits the transcendental unsatisfaction of the subject, that is, its negative pleasure in the sublime, as a 'sign' of moral development. In the essay 'The Contest of the Faculties', Kant remarks that,

the passion and *enthusiasm* with which men embrace the cause of goodness ..., gives historical support for the following assertion: true enthusiasm is always directed exclusively towards the *Ideal*, particularly that which is purely moral, and cannot be coupled with selfish interests. ['The Contest of the Faculties' in *Kant's Political Writings*, 183]

The 'sign' of humanity's progress towards a truly moral culture (a republic of freely chosen 'human' ends), is the disinterested 'enthusiasm' of those who witness the chaos and upheaval of historical events from states not directly involved. The event, or *Begebenheit*, cannot occur within the 'formlessness' through which the history of moral culture is made. The actors who participate in revolutions cannot disengage their interests from the particular states and constitutions in which their conflict occurs. It is only in the 'enthusiasm' of those who have no material interest in the outcome of the revolution, that Kant's proposition of a constant improvement in human nature can be validated. The judgement of historico-political approbation is a 'sign' both of a contemporary, irreversible improvement, and of a necessary development towards a cosmopolitan (non-conflictual) republic of states.

Kant's idea of historico-political judgement is 'reflective' in the same sense expounded in the *Third Critique*: the object is evaluated in terms of principles which remain purely subjective, and which do not 'determine' cognition. The objects with which Kant is concerned in his political writings are particular



nation-states; that is, the possibility of cosmopolitan republics in which the moral culture of each could develop in the absence of conflict. The concept of historical enthusiasm is exclusively directed towards the ideality of this cosmopolitan formation; it 'signifies', non-schematically, the actual formation of moral 'culture' which is the guarantee of its continued improvement. This state of extreme 'sympathy' for those involved in the events formative of human culture, is not moral in itself; its exposition in Kant's 'Contest of the Faculties' discloses an aesthetic moment of transcendental agitation akin to that of the sublime. The imagination is bidden to present the unrepresentable - the Idea (ideal) of freedom.

Lyotard's reading of Kant's 'reflective' evaluation of historical events, places its aesthetic, that is, 'sublime', reception of the moral ideal, at the centre of his conception of political judgement. The vacillation of the subject between pleasure at its capacity for ideas, and pain at its inability to represent them, is that which Kant expounds in the *Third Critique* as the object's sublime 'elevation' beyond cognition. It is this ambivalence of thought towards its ability to think its own substance, that Lyotard posits as the power of critical judgement,

what is discovered [in the 'sublime' enthusiasm of historico-political judgement] is not only the infinite import of ideas, its incommensurability to all presentation, but also the destination which is to supply a presentation for the unrepresentable, and therefore ... to exceed everything that can be presented. [*The Differend*, 166]

The transcription of Kant's idea of enthusiasm presented in *The Differend*, renders the negative pleasure of historical 'sympathy' as experience of the 'incommensurable'. The presupposition of an unbridgeable gulf between the realms of practical and theoretical reason, which informs Kant's 'reflective' notion of historico-political judgement, is represented by Lyotard as the disclosure of thinking's ontological relation to every determinate form it produces: 'In its periodic unbridling ... enthusiastic pathos conserves an aesthetic validity, it is an energetic sign, a tensor of the *Wunsch*'.<sup>38</sup> The political as such, consists for Lyotard in the illusion of representability which

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springs from the aesthetic effect of the unrepresentable (incommensurability, heterogeneity): it is the preservation of the 'agitated', indirect representation of the Idea of freedom (spontaneity) against direct, generic representations.

The enthusiasm which Kant cites as the *Begebenheit* signifying progress in the moral nature of humanity, presupposes the same 'reflective' universality expounded in the 'Analytic of The Beautiful' and the 'Analytic of The Sublime'. The disinterestedness of historico-political judgements presupposes a 'common sense' (*sensus communis*) which has no determinate rule, but which 'in its reflective act takes account (*a priori*) of the mode of representation of everyone else'.<sup>39</sup> Each individual ought to judge in this particular way, but does not do so necessarily. It is this 'indeterminate'<sup>40</sup> commonality of judgement that Lyotard transcribes in *The Differend* as 'a consensus which is nothing more than a *sensus* that is undetermined'.<sup>41</sup> The objective universality of the community, i.e. the work, desire, and satisfaction formative of and sustained within the totality of social relations, is dispersed through judgement's 'ethical' responsibility towards abstract difference (the 'unpresentable' as such).

The reading of the *Third Critique* through which Lyotard expounds his idea of a 'community' of individuals related through their sensitivity to the 'unpresentable' (differend, dissensus, heterogeneity as such), constitutes a violent subjectivization of Kant's critical project. The sublime, whose historico-political significance is expounded by Kant as enthusiasm for the formative potential of historical revolutions, is transcribed by Lyotard as thought's spontaneously reformatory relation to the 'present' genres, discourses, institutions, etc. The development of subjective thinking into objective categories which is immanent in the *Third Critique*, is represented by Kant in his political writings as a reflective approbation for the actual conditions under which subjectivity could develop its moral culture. *The Differend's* account of historical 'signs' however, abstracts the transcendental 'agitation' of enthusiasm from the objective development it signifies. The critical philosopher's 'distaste' for the disorder of empirical history, is read by Lyotard



as an inscription of originality into a demand (for order and 'formation') constituted in the rules of the 'cognitive genre'. It is this inscription which, for Lyotard, allows Kant to resolve the antinomy of freedom and determinism: human history is represented as the 'addressor' (sender) of an ontological teleology,

Whatever acceptation is given to the Idea of nature, one's right of access to it is only through signs, but the right of access to signs is given by nature. Not even a denaturalized nature and signs of nothing, not even a postmodern nonteleology, can escape this *circulus*. [*The Differend*, 135]

The 'sublime' affection (enthusiasm) of the spectator of the historical events which 'signify' the improvement of man's moral nature, for Lyotard, discloses 'a kind of agitation [of judgement] in place, one within the impasse of incommensurability'.<sup>42</sup> On this transcription, judgement is abstracted from Kant's 'reflective' teleology, and posited as a perpetually reformative 'tension' of incommensurability. This constant tension, the result of the impossibility of passage from Ideas to their representation in imagination, is taken from the lack of mediation among the faculties of the critical subject. The notion of a sublime affection disclosing the development of humanity, abstracts the receiver of the '*Begebenheit*' from ethical life; it places the immediate reception of 'improvement' outside of the conditions through which that improvement is recognized, or 'received'. The possibility and necessity of such a transmission, or 'passage', depends upon Kant's radical separation of practical and theoretical reason, autonomy and heteronomy. The recognition of nature's 'end' for humanity (moral nature's autonomous pursuit of its own ends) cannot be brought about through the 'heteronomy' of social relations.<sup>43</sup> The moral 'culture' of the critical subject is recognized and attested to in its 'improvement', only in judgements that abstract it from the social relations in which it is embedded. Lyotard's transcription of Kant's idea of the 'sign of history', posits the impossibility of this reception as a perpetual 'agitation' of judgement, the experience of incommensurability as such.

This reading of Kant's idea of the sign of history, fails to recognize that the

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abstract separation and difference through which he understands the possibility of the social, is itself the precondition of ethical mediation. The *Third Critique's* section on 'The ultimate end of nature as a teleological system', makes it clear that the 'culture of skill' through which reason develops its independence from immediate inclination is produced through an antagonism of particular ends which must be opposed by a lawful authority centred in a whole, called a civil community.<sup>44</sup> The 'cosmopolitan whole' which is the object of Kant's political judgement however, is thinkable as a 'formation' only through the abstract separation and difference it presupposes i.e. the reflective relations of civil society. The formation of the subject must be acknowledged as part of the actuality of the whole (*Sittlichkeit*); for it is the bourgeois subject's abstract individuality which underlies Kant's concept of reflective (non-cognitive, conceptless) apprehension of ethical identity. Lyotard's rejection of Kant's *Begebenheit*, i.e. the disinterested enthusiasm of the spectator, as 'signifying' a finality of ethico-political 'congruence', posits the infinite vacillation of the sublime as absolutely independent of the concrete national forms into which spirit differentiates itself. The moment of subjective affection, which Lyotard conceives as the experience of incommensurability as such, is posited as completely independent of the immanent mediation (civil community) which Kant's historical enthusiasm presupposes.<sup>45</sup>

Lyotard's conception of 'postmodernity' formulates the knowledges (genres) which have developed in the 'postindustrial age'<sup>46</sup>, as a proliferation of absolutely incommensurable discourses which it is impossible to mediate in any 'totalizing narrative',

We no longer have recourse to the grand narratives - we can neither resort to the dialectic of spirit nor even to the emancipation of humanity as validation for postmodern scientific discourse. [*The Postmodern Condition*, 60]

The 'postmodern condition' is characterized by the manifest impossibility of ethical legitimation founded upon responsibility to the 'community' ('congruent' totality) as such. Each 'generic' form of knowledge has its own specific rules of linkage and formation, and its own standards of success and failure which,



according to Lyotard are completely incommensurable. Thinking as 'critical activity', is always immediately responsible to the differends which emerge from this incommensurability; it is 'obligated' to phrase that which is unrepresented and unrepresentable in the conflict (dissensus, paralogy) of specific genres. It is infinitely indeterminate sensitivity to difference which *The Differend* presents as the spontaneity of political judgement; that is, thinking's acceptance of its originary power in bearing witness to the infinite possibility of wrong and differend.

The 'generic discourses' which Lyotard expounds as infinitely re-formed and re-legitimated by critical judgement, do not, as he claims, constitute absolute heterogeneous and incommensurable forms of knowing. The development and differentiation of knowledge into abstract elements, must be understood as concrete with the development of ethical life. The objective multiplication of 'scientific' cognitions within the totality of *Sittlichkeit*, presupposes a complex economy of 'social needs'<sup>47</sup> which is grounded in the finitude (actuality) of the subjective particular. Without the bourgeois subject's atomistic proliferation of these social needs and desires, the differentiation of knowledge into determinately finite ('reflective') forms could not take place. The determination of abstract difference in the discrete 'sciences' of the understanding (*Verstand*), presuppose the aporetic self-seeking of the subjective will; and it is not until the impossibility of an 'ethics' of individual spontaneity is re-cognized, that these forms of knowledge can become part of the activity of spiritual self-recognition in ethical life.

Lyotard expounds 'the political' as the non-generic spontaneity of thinking in relation to generic claims of establishment and presence. This attempt to abstract 'political' judgement from the conditions which produce and sustain self-recognition, posits a 'natural beginning' to human history which Lyotard is unable to expel from the 'postmodern' experience of absolute heterogeneity. 'Primitive communities' are produced and reproduced, on Lyotard's understanding, through the resistance of 'narrative' to the contingency of the



occurrence: they are constituted through the retelling of 'little histories' in which names, as passed from one generation to the next. The social 'body' is conceived as the universe of these particular names; it is the narrative which situates the individual within a 'mythic' (homogeneous) time, beyond the anxiety of the event. What cannot be 'consumed' by this anecdotal history, the heterogeneous, the 'left over', is, on Lyotard's reading, sublimated in acts of sacrifice, or dissipated in shamanistic rites. The savage community thereby acknowledges the limits of its narrative universe, while 'sheltering the rigid designators [names] of common identity from the events of the "now", and from the perils of its linkage'.<sup>48</sup> 'Savage' narratives are tied to the particular names and events they tell. This original negotiation of the occurrence remains inscribed in the discourses of nationalism and the political institutions of postmodern societies; for each constitutes its historical mythology independently of every other. 'Political' judgement of events can only be made independently of the concrete life in which the individual recognizes its identity, i.e. the particular 'national world'.

The possibility of the heterogeneous forms, which for Lyotard constitute 'postmodernity', is excluded by this account of human history's 'savage' beginning. The historical forms of *Sittlichkeit* whose development is expounded in the *Phenomenology*, are intersubjective relations in which self-consciousness misrecognizes the concrete universality of its substance. The mythological representation of spirit's temporal deployment in the dialectic of master and slave, expounds the development of the most undifferentiated structure of domination: obedience based on fear of death. Even in this mythos of immediately transparent domination, the social can only be thought as (abstract) differentiation and misrecognition; that is, as immanently ethical. The antithesis of savage discourses to the dispersal and dissensus by which Lyotard understands 'postmodernity', is a contradictory opposition of the contemporary conditions which necessitate thinking's sensitivity to the incommensurable, and the homogeneity ('savage' unity) from which those conditions are produced. The 'beginning' is posited as an undifferentiated social

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moment; a unified time in which traditional work, belief, satisfaction and desire is reauthenticated in the telling of anecdotal histories,

There would be no gap, therefore, between the current narrator [of anecdotal history] and the Ancients, except for in principle a chronological one. [*The Differend*, 154]

The social as such can only be thought through differentiation and misrecognition; it cannot, as Lyotard's notion of savage narratives maintains, exist prior to the history of self-consciousness.

*The Differend's* reading of Kant's *Third Critique*, attempts to show that the concept of reflective judgement discloses an experience of heterogeneity which cannot be encompassed within the subjective faculties of reason and understanding; and that it is this spontaneous 'critical activity' which is the ground of all legitimacy. For Lyotard, the incommensurability of the discourses which thought encounters in 'postmodern' society, is the political form taken by this ontologically immediate relation to the present. The freedom of thinking is preserved through its constant phrasing of the differends that spring from the heterogeneity of discourses. Popular narratives of the nation, on the contrary, retain the 'savage' potential of the primitive community. *The Differend* presents 'sentimental' identification with the nation and its people as a preservation of the conflictual opacity of primitive cultures; the incommensurability of genres of discourses is, for Lyotard, covered over by the violent identity of the nation, which appropriates the idea of the human to its particular 'community'. The spontaneity of Lyotard's political judgement, is distinguished from and opposed to, these concrete national forms in which the individual recognizes itself. It is an abstract ought (*sollen*) which posits heterogeneity and dissensus as an end completely independent of self-consciousness' concrete historical development. The 'political sentiments' of nationalism and patriotism<sup>49</sup> do not originate in a 'natural beginning'; for even in their most fanatical, fantastic forms, they can only be truly recognized in their relations to the differentiated totality of *Sittlichkeit*.

The concept of 'generic' knowledges, which Lyotard expounds as the end

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(termination) of homogeneous 'community' and the beginning of modern and postmodern cultures, is completely abstracted from the social relations which produce the necessity for specialized forms of knowledge. The needs through which these knowledges are constituted are specifically 'social'; they develop through a 'division of concrete need into single parts and aspects which in turn become different needs, particularized and more abstract'.<sup>50</sup> This differentiation of 'material' into 'abstract' need, is the precondition of the philosophical, scientific, and technical knowledges which constitute the finitude of the ethical idea: it is not until the subject emerges as reflectively aware of its abstract wants, desires and satisfactions (i.e. as 'bourgeois'), that the formation of these elements of knowing is possible. The specialized knowledges which, for Lyotard, mark the end of the 'social "body"' as a unifying, homogeneous time, cannot function to disperse the subject into an indeterminate, uncommunicable form (*sensus*) accompanying each contingent act of judgement. It is the 'reflective' subject produced by, and productive of, the work, desire, and satisfaction which constitute 'social' need, that is the condition of abstractly differentiated forms of knowing. The knowledges constituted through the self-seeking of the subjective particular, are made possible by the transition to the bourgeois property form: 'need', which has ceased to be exclusively determined by nature, is mediated by the formative activities of those involved in the complex of productive relations,

When needs and means become abstract in quality, abstraction is also a character of the reciprocal relation of individuals to one another. This abstract character, universality, is the character of being recognized, and is the moment which makes concrete i.e. social, the isolated and abstract needs and their ways and means of satisfaction. [*Philosophy of Right*, ¶192]

The development of discrete forms of knowledge is concrete with the social mediation of the satisfaction and desire produced by reflective subjectivity. The formative institutions which spring from the thoroughgoing interdependence constituted in the system of need (Administration of Justice, Public Authority, Corporations) do not subsume the 'heterogeneity' of different forms of knowing under a posited 'metaphysical' idea of the self (*Selbst*). The forms of knowledge



which develop through the proliferation of abstract needs, presuppose a subject 'whose end its own interest' [*Philosophy of Right*, ¶187], and which recognizes the (universal) other only as a means to the fulfilment of its ends. The process of differentiation through which abstract conceptions of the social object are formulated, is grounded in the wants, desires, and satisfaction of a subject that recognizes itself as formally free to appropriate and dispose of things. The understanding (*Verstand*) produces elements of knowledge which reinforce the reflective necessities constituted in civil society; each is an external recognition of the universal interdependence with which ethical life is concrete. These specific forms of knowledge do not exist as self-legitimizing 'necessities' whose rules are independently 'formative' of the subject. The development of reflective subjectivity occurs through the necessity of re-cognizing its particular desires as produced and satisfied in the totality of social relations. Knowledges produced through the socialization of need and satisfaction, are concrete with the historical differentiation by which ethical life develops. The understanding's abstract cognition of *Sittlichkeit*, presupposes and reinforces its externality to substantive will.

Hegel's account of political economy for example<sup>51</sup>, shows that qualitative and quantitative analyses of utilitarian self-seeking, cannot provide an adequate account of ethical identity. Adam Smith, in attempting to provide a solution to the inequalities which he saw as jeopardizing the 'natural liberty' of the market economy, failed to acknowledge the mediation inherent in economic relations. Thus, although the *Theory of Moral Sentiments* makes ethical recognition a moment posited in the emotivism of 'sympathy' (the intrinsic 'fellow-feeling' with which human beings are invested by God), its project implicitly acknowledges the insufficiency of trying to make civil society the ground of social and political cohesion. 'Adam Smith', as Avineri puts it in his *Hegel's Theory of The Modern State*, 'is aufgehoben - both preserved and transcended - in the Hegelian system'.<sup>52</sup>

The abstract (moral, epistemological, technical, etc.) cognitions which

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develop the universality immanent in pure self-seeking, presuppose the separation and difference of relative ethical life. They are forms of *Verstand* which posit difference as pure identity: each element is in principle estranged from the unity of the whole. As such, these knowledges are concrete with civil society's development of desire and satisfaction; they reflect and reinforce the subjective self-seeking through which need is abstractly taken into the totality (*Sittlichkeit*). The 'generic' knowledges which Lyotard claims are incommensurable<sup>53</sup>, produce a universal development of subjectivity which cannot be encompassed within the terms of abstract separation and difference. As the 'actuality of the ethical idea'<sup>54</sup> the state is the unity of all elements of knowing sustained in ethical life. Work, satisfaction and desire, are the 'actuality' realized in, and presupposed by, self-consciousness' abstract appropriations of objectivity; they are the finitude through which individual subjectivity re-cognizes itself in the being and the activity of the state.

The historical development of self-consciousness has no 'natural beginning' or 'utopian end'<sup>55</sup>; it is the infinite differentiation of its work, satisfaction, and desire into abstract forms of misrecognition. This differentiation, and the positedness which is inherent in and necessary to it, is the true object of ethical and political judgement. Nazism, as was seen in chapter one, can only be 'thought' in its true philosophical significance when the social, political, and economic disintegration of Weimar Germany is conceived as an ethical dissolution which is both presupposed and reinforced by the Nazi terror. The racial 'culturing' of subjectivity, that is, its abstract, destructive relation to *Sittlichkeit*, destroys the institutional forms through which the political life of the state is constituted as such. The 'Aryan' releases himself from all secular (finite, actual) responsibilities to pursue his millennial destiny. The state, which has lost its 'ethical roots' in civil society, becomes an apparatus of terror and coercion, which can only fulfil itself in a perpetual state of war against the non-Aryan, and the liquidation of the Jew. This is the rationality and actuality of Nazism. The racial culture of subjectivity cannot be contained within the disintegrating structures of *Sittlichkeit*; the political life of the state is reduced



to rhetoric and coercion; and the possibility of re-cognizing the destructive alienation from ethical substance passes over into more concretely rational states.

Political judgement cannot be abstracted from the formative laws and institutions of ethical life (*Sittlichkeit*). Within a state whose mediation of subjectivity is the principle of its objective institutional forms, political activity is an infinite reactualization of the 'ethical Idea'. The discrete knowledges which are constituted through the separation and difference of civil society, are re-cognized in the state as finite forms of subjectivity which must be mediated with its universal (spiritual) identity. The political activity of the state is always judgement and deliberation upon its own finitude (positedness). The contingency of knowing and willing produced in civil society is not excluded from the mediation of spirit; it is re-cognized and re-integrated into its substance. This inner, self-transparent unity confers the right and responsibility of judging other, less mediated states, upon those whose constitutions embody the principle of finite subjectivity. Particular forms of *Sittlichkeit*, although they are finite and can never know the truth of their relation to the absolute - 'actuality is already there cut and dried after its process of formation has been completed'<sup>56</sup> - are related to each other as more or less adequate re-cognitions of the ethical Idea. Thus it is the right and responsibility of those nations with explicitly established rational constitutions<sup>57</sup> to judge those whose constitutions are less developed, or which have become ethically or politically deformed.

To conclude, the idea of *sensus communis* which Lyotard develops in relation to his concept of 'the political', discloses a contradiction between the savage construction of nationality, and the dispersal of the subject throughout the incommensurable discourses of 'postmodern' societies. There is a complete discontinuity between Lyotard's account of the 'mythic', homogeneous time of the savage community, and this concept of the paralogy and dissensus which political judgement is obligated to produce and reproduce. It is this

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discontinuity which is at the core of Lyotard's 'culturing' of subjectivity; for the judgement through which the dispersal of knowledge is infinitely reproduced, is posited in abstraction from the historical conditions which it presupposes. The differentiation of knowledge produced in civil society, is presented in *The Differend* as an incommensurability which has always to be phrased. This reception of difference as absolute heterogeneity, reproduces itself as an abstract subjective demand which is always-already insubstantial and indeterminate. Lyotard's notion of political judgement as 'unprepared' spontaneity therefore, has no object precisely because it has no history; it is a 'culture' of consciousness which remains irreconcilably opposed to the formative institutions of *Sittlichkeit*. His positing of a natural ('primitive') beginning to the social "body"<sup>58</sup>, excludes re-cognition of the spiritual life of the state as grounded in the historical forms of self-consciousness' misrecognition. It posits a 'presence' of the totality in national narratives, which is irreducibly opposed to the spontaneity of the 'critical watchman'.

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## Postscript

## Ethics and the Necessity of 'Gaining Time'

The event of 'Auschwitz', which Lyotard insists cannot be thought speculatively, must be judged in terms of the actual historical formation (*Sittlichkeit*) from which self-consciousness became radically estranged. Lyotard's critique of speculative thinking presupposes that Hegel's 'method' of historical exposition constitutes an abstract set of rules through which contingent events are homogenized and re-presented as necessary. Each historical form produces its own 'new' sublation, and thereby participates in the realization of spirit. This is a complete misrecognition and misrepresentation of Hegel's concept of speculative exposition. Each historical moment is spiritual only insofar as it is actual (finite); its content can be judged only in relation to the universality of the work, satisfaction and desire recognized and sustained by natural consciousness itself. There is no utopian 'end' to speculative history, as Lyotard claims. The aporias of finite misrecognition always affect the state; and it is this finitude which ought to be the object of political judgements. It is only through the recognition and mediation of its own finite differentiation, that a state has the right and power to judge the ethical and political constitution of another state.

In chapter one I have shown how it is through the notion of a revolutionary 'culture' of consciousness that racial ('Aryan') politics of Nazism must be thought. The *Phenomenology's* account of the French Revolution is shown to expound the same destructive relation of subjectivity to ethical substance as is reproduced in Nazism. Neither the absolute 'matter' of freedom, nor the genetic purity of the 'race', is capable of actualizing itself as anything other than the destruction and dissolution of the state. Both concepts - absolutely rational 'being', and absolute racial purity - are utterly indeterminate and incapable of legitimizing any action. The 'revolutionary' (re-formative) consciousness becomes the sole arbiter of social reality. The possibility of infinitely revising the ideal (the 'race', absolute 'rational' freedom) is produced through the

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dissolution (lawlessness) of ethical life; and it is this infinite re-presentability which constitutes the destructive abstraction of subjectivity from *Sittlichkeit*.

It is the relationship of Marx's proletariat to the totality of ethical life, which constitutes Marxism's infinite potential for political terror. The subsumption of every 'superstructural' institution under the basic determinism of the capitalist economy, reduces the institutional forms which support and reinforce bourgeois individualism, to epiphenomena which distort and pervert the self-consciousness of the (revolutionary) proletariat.<sup>59</sup> The relationship of thought (subjectivity) to actuality (the contradictory nature of capitalist productive relations) which Marx posits as the unitary cause of revolutionary praxis therefore, takes the form of an abstract ought, or demand, the conditions of whose realization are infinitely specified and unspecifiable. It is the absence of a substantive account of how the abstraction and alienation of subjectivity produced by bourgeois property relations, is misrecognized by that subjectivity, which points to the danger of Marxism as 'culture'. Social life can again be taken as a non-ethical ('material') object, whose arbitrariness, enshrined in bourgeois law, is reinforced by the arbitrariness of the revolutionary consciousness. A speculative evaluation of Marxism must acknowledge the abstractness of the relation of subjectivity to ethical life posited in the notion of a revolutionary proletariat. Only when it is recognized that subjective representations of the actual are concrete with its actuality, can the 'formative and destructive potencies'<sup>60</sup> of capitalism be recognized in their spiritual relation to the totality of the state. The ethical significance of these potencies can only be properly judged by a self-consciousness which has acknowledged its concrete relation to the substance of *Sittlichkeit*.

For Lyotard, Marx's concept of the emancipated self immanent in the domination of labour by capital, is subject to the same 'logic of the result'<sup>61</sup> as Hegel's speculative history. The constitution of a universally revolutionary proletariat, cannot take place among the mutually 'opaque' national traditions of different societies. It remains an idea of reason whose reception and

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actualization depend upon the 'aesthetic' enthusiasm of those (proletarians) who witness the particular forms in which the differend between capital and labour is violently exposed. The 'passage' from the ideality of the proletarian 'subject', to the 'real political organization of the real working class'<sup>62</sup>, which Marx expounds as an objective historical necessity, is for Lyotard a confusion of 'sign' and 'referent': the nationally dispersed 'enthusiasm' for the revolutionary activity of the proletariat cannot guarantee its empirical existence as a universal class (collective agency),

Internationalism cannot overcome national worlds because it cannot channel short, popular narratives into epics, it remains 'abstract': it must efface proper names .... Even the communist epic of workers liberation splits off into national communist epics. There is no differend between national narratives ...; but the differend between the Idea of freedom and narratives of legitimation is inevitable. [*The Differend*, ¶235]

An illusory passage is made in Marx's revolutionary politics between the heterogeneous regimes of aesthetic reaction and practical determination; and this is subsequently compounded by 'the party's' attempt to enforce pragmatically the universal demands of the proletariat on the empirical working class.<sup>63</sup>

This problem of the historical victimization of the universal 'proletarian' subject, is first addressed by Lyotard in his *Libidinal Economy*. In the section 'The Desire Named Marx', he attempts to show that Marx's critique of capitalism presupposes a 'naturalness' of labour power, which, although abstracted and perverted in exploitative productive relations, periodically expresses itself in the crises afflicting capitalist economies. For Lyotard, Marx posits a dialectical relation between the original energetical force of labour power, which constitutes a 'region' that is always beyond the system of productive relations; and the system itself, which perverts and corrupts the naturalness of the proletarian subject,

The whole 'critique' is articulated in the following simple statements: profit hides surplus-value, surplus value issues from the occultation of the use-value of the force of labour by its exchange value; that is: from the occultation of its substantial, superabundant force by its property of being an exchangeable, sufficient commodity; capitalism must also be



mistaken about the origin of its growth, and this mistake is fatal to it. [*Libidinal Economy*, 143]

The essence of Lyotard's understanding of Marx in *Libidinal Economy* is that there is no absolute necessity underpinning the dialectics of exploitation set out in *Capital*. The labour power, or 'force', which Marx understands as the necessary condition of capitalist accumulation and exploitation, according to Lyotard, is displaced from its privileged position through the historical tendency of capitalism to make knowledge a force of production.<sup>64</sup> The system (of productive relations) is itself 'natural' in its origin and development; it is always an economy of desire. Thus, the ethical privilege which Marx extends to productive labour in its alienated condition, depends upon a posited transcendence of 'force' which cannot be justified historically: Marx's accounts of 'primitive societies' according to Lyotard, simply idealize the primacy which Marx attributes to labour power. In the absence of this primacy, Marxism loses its referent: desire, according to Lyotard, is able to invest even the most deskilled, abstract and 'alienated' forms of labour. The development of capitalism must therefore be understood in terms of the 'metamorphoses' of desire, not the increasing alienation of an original ('natural') subject.

In *The Differend*, Lyotard attempts to expound a link between continued existence of Marxism as an object of political faith and commitment (an ideology of 'working humanity'<sup>65</sup>), and the impossibility of finding the (proletarian) subject of exploitation in the socio-economic relations of national economies. The 'system' of productive relations is, for Lyotard, internally and externally heterogeneous: it produces incommensurable genres of discourse which cannot sustain a 'national' unity of productive labour; and is (also) immediately isolated from the internationality of the proletariat by the opacity of national traditions.<sup>66</sup> Thus the relationship of objective reality and subjective representation through which speculative thinking expounds the political significance of Marxism, is simply excluded by Lyotard's idea of the 'result'. The possibility of re-cognizing Marx's project as misrecognition of civil society and its abstract relations and institutions, is for Lyotard no more than an



elaboration of the speculative genre's 'metaphysical' Idea of the self (*Selbst*). There is no differend between the discourses of Marx's 'scientific' socialism and Hegel's speculative exposition of ethical life; for both attempt to 'homogenize' the contingency of the event, and to nullify the sensitivity of thought to the 'unrepresentable' (wrong and differend). Between Marx and Hegel, according to Lyotard, there is only litigation over the significance of the 'occurrence': the project of a speculative Marxism could only constitute a further homogenization of discourse within the speculative Idea of the good.

Lyotard's account of an increasingly acute antithesis between the political and the economic within the postmodern culture, presupposes his abstract homogenization of Marxist and speculative thought. The 'economic genre', according to Lyotard, does not prescribe an obligation: 'gaining time' is not a deliberated motivation (wealth creation equals more security, more adventure, etc.), but an immediate necessity (having gained some time I will gain some more). The demand of economic rationality therefore, excludes spontaneous political judgement; it is insensitive to the incommensurability of different regimes and genres, simply reducing them to their efficiency of requital ('gaining time'). 'Exchange' and a 'cultural' sensitivity to the unrepresentable are, for Lyotard, antithetical. The latter signifies a putting into circulation of information irrelevant to the 'work to be done' - the work of gaining time. Economic rationality demands that 'culture' ought to be eliminated; that human beings should simply refine their techniques of exchange, rather than developing sensitivity to Ideas, their capacity for spontaneous judgement.<sup>67</sup>

This exteriority of 'culture' and 'economy' which Lyotard expounds as the threat of homogenization inherent in postindustrial societies, posits the economic as a genre completely abstracted from the work, satisfaction, and desire of subjectivity. However, by opposing the temporality of the 'economic phrase' (immediate requital) to every other discourse and regimen, Lyotard introduces a necessity into his unrepresentable community (*sensus communis*) which cannot be dispersed by spontaneous judgement. His claim that the

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differends which spring from the 'current phrase' constitute an 'insurmountable obstacle'<sup>68</sup> to the dominance of the genre of exchange, cannot be sustained in the light of his exposition of economic necessity. It is only through re-cognition of 'reflective' self-awareness as reinforcing bourgeois property relations, that the contingency and difference produced in civil society can become actualized in the substantive will of the state. A speculative Marxism, which has acknowledged the institutional forms through which 'capital' in its deterministic ('fetishistic') form, would become part of this process of spiritual mediation: the contradictions of the economy would become part of a 'comprehensive exposition of capitalism'<sup>69</sup> as a 'culture' mediated within the totality of ethical life. Conceived speculatively, everything is a judgement; but it is not until judgement re-cognizes its own substantive conditions that it has a true ethical or political significance.

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## Chapter IV

## Notes

1. *Critique of Judgement*, 27.
  2. *Ibid.*, 35.
  3. *The Differend*, 131.
  4. Richard Beardsworth, in his essay 'On the Critical "Post": Lyotard's Agitated Judgement', remarks that, 'What is "organizing" the "field" before its legislative enshrinement into an *Idea* of a field or of an archipel is a tension of unity running through the "faculties" which will allow their heterogeneity to be either intensified analogically (*à la* Lyotard) or synthesized analogically (*à la* Kant)' ['On the Critical "Post"', in *Judging Lyotard*, 74]. This account of heterogeneity however, fails to recognize that the 'tension' (between the faculties of the Kantian subject) which Lyotard 'intensifies' through the idea of the archipelago, is abstracted from a totality which articulates the insufficiency of analogical representation as such. Read speculatively, the *Third Critique* does not, as Beardsworth maintains, present the possibility of 'either' synthesizing 'or' intensifying heterogeneity: it is the point at which its actuality as concrete difference must be recognized.
  5. 'Perpetual Peace', in *Judging Lyotard*, 112.
  6. *Critique of Judgement*, 31.
  7. '*Sensus Communis*', 20.
  8. *Critique of Judgement*, 30.
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9. *'Sensus Communis'*, 21.
  10. *Ibid.*, 24.
  11. *The Postmodern Condition*, 60.
  12. *Encyclopaedia Logic*, ¶166.
  13. *Ibid.*, ¶167.
  14. *Ibid.*, ¶179.
  15. This is brought out particularly clearly by Taylor in his account of the 'Subjective Logic'. '[From] the stage at which the concept sundered itself into Judgement ... we have been following the development of thought about reality. and this development was sustained by the aim of achieving self-sufficient necessity. This then has been the real basis of that incommensurability which was the motor of the dialectic. It is why the non-identity of the subject and predicate in the simple judgement of quality made them incommensurable (since identity in some sense is thought by Hegel to be involved in necessary connection). This is what forced us up through the different levels of judgement, and beyond these to syllogism' [*Hegel*, 315]. Thus, incommensurability, as Taylor rightly points out in this paragraph, is an historical notion whose necessity is articulated throughout Hegel's speculative writings. The experience of conceptual 'unrepresentability', which Lyotard attempts to articulate as thinking's (ethical) obligation to its own originality, in other words, is a subjective abstraction which actually reinforces the necessity of (objective) mediation and re-cognition of the other.
  16. *Critique of Judgement*, 39.
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17. *'Sensus Communis'*, 24.
  18. *Critique of Judgement*, 36.
  19. *Encyclopaedia Logic*, 208.
  20. *Ibid.*, 209.
  21. *Critique of Judgement*, ¶61.
  22. *Just Gaming*, 93-94.
  23. *Ibid.*, 94.
  24. *Lectures on the History of Philosophy*, 472.
  25. *The Differend*, ¶190.
  26. See chapter one.
  27. *Encyclopaedia Logic*, ¶198.
  28. *Philosophy of Right*, ¶258, note.
  29. *The Differend*, 161-171.
  30. *Critique of Judgement*, 119.
  31. *Encyclopaedia Logic*, ¶174.
  32. *Critique of Judgement*, 96.
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33. *Science of Logic*, ¶735.
  34. *Ibid.*, ¶735.
  35. *Critique of Judgement*, 96.
  36. 'Idea for a Universal History with a Cosmopolitan Purpose', in *Judging Lyotard*, 42.
  37. 'The Contest of the Faculties', in *Judging Lyotard*, 182.
  38. *The Differend*, 167.
  39. *Critique of Aesthetic Judgement*, ¶40.
  40. *Ibid.*, ¶22.
  41. *The Differend*, 168.
  42. *Ibid.*, 167.
  43. As Yovel points out in his *Kant and the Philosophy of History*, the 'cunning of nature' which Kant expounds in his historico-political writings, produces the political organization of pure moral subjectivity by 'destroying' the particular forms through which that political organization is produced' [196]. The violence and destruction through which history reaches its 'end', in other words, is for Kant completely exteriorized from the actuality of political life: spirit would have no recollection (re-cognition) of the oppositions through which its 'moral culture' has come about. Speculatively understood, this critical 'end' of history, is the negation of ethical and political activity.
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44. *Critique of Teleological Judgement*, ¶83.

45. In her 'Lectures on Kant's Political Philosophy', Hannah Arendt makes the relationship between the organic development articulated in the *Third Critique* (ie from aesthetic to teleological judgement), and the exposition of historical progress set out in Kant's political writings, fully explicit. She remarks that 'Human species = Mankind = part of nature = subject to "history", nature's ruse = to be considered under the idea of "end", teleological judgement: the second part of the *Critique of Judgement*'. And further, 'Men = earthbound creatures, living in communities, endowed with commonsense, *sensus communis*, a community sense; not autonomous, needing each other's company even for thinking = the first part of the *Critique of Judgement*: aesthetic judgement'. It is with the category of teleology, in other words, that the true object of Kant's historico-political writings is disclosed: the development of moral 'culture' within a 'cosmopolitan' totality. The judgement of sublime enthusiasm (of the spectator), which Lyotard abstracts from Kant's essay, *The Contest of the Faculties*, in other words, is concerned with a development which must be subsumed under the notion of 'Mankind' as the universal meaning entailed in particular historical events. It is the necessity of mediating particular (historical) forms, with their universal significance, that Hegel expounds in the *Logic's* discussion of teleology.

46. *The Postmodern Condition*, 3.

47. *Philosophy of Right*, ¶190-198.

48. *The Differend*, 155.

49. *Philosophy of Right*, ¶268.

50. *Ibid.*, ¶190.

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51. *Ibid.*, ¶189, plus note and Addition.
  52. *Hegel's Theory of the Modern State*, 147.
  53. *The Differend*, ¶178 and ¶179.
  54. *Philosophy of Right*, 257.
  55. See 'The Culture and Fate of Marxism', in *Hegel Contra Sociology*, 214-220.
  56. *Philosophy of Right*, 12-13.
  57. *Ibid.*, ¶349.
  58. *The Differend*, 155.
  59. Charles Taylor, in his *Hegel and Modern Society*, makes a similar point in regard to what he calls Marxism's loss of 'situation' after socialist revolution and the transition from capitalism to communism. 'From the beginning', he remarks, 'man has to create the conditions of freedom. They have to build socialism, develop the preconditions of communism. But once the conditions are realized, the Marxist notion of freedom is of no further help. It is not a question of providing a detailed blueprint for a free society .... Rather it is that the overcoming of all alienation and division leaves man without a situation, and at this stage, the end of 'pre-history', the Hegelian point about the emptiness of absolute freedom begins to apply' [154]. thus, the 'terror of Marxist dictatorships is that their 'construction' of a socialist society, becomes a destructiveness which extirpates every institution which it deems opposed to historical necessity.
  60. *Hegel Contra Sociology*, 220.
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61. *The Differend*, ¶237.

62. *Ibid.*, ¶238.

63. *Ibid.*, ¶238-239.

64. This potentiality is explored more fully in the account of the proliferation and heterogeneity of forms of knowledge set out by Lyotard in *The Postmodern Condition*.

65. *The Differend*, ¶237.

66. Lyotard, in his 'memorial' to the French Marxist Pierre Sonyri, attempts to show that the latter's meticulous pursuit of the 'objective' forms which the dominance of the 'genre' of capital has taken amounts to a critical reception of the differends produced through that dominance. He remarks that 'what in Marxism cannot be objected to[is] that there are several incommensurable genres of discourse in play in society, none of which transcribe all the others; and nevertheless one of them at least - capital, bureaucracy - imposes its rules on the other' [*Peregrinations*, 72]. Even this 'critical' Marxism however, is for Lyotard tied to an original discourse of exploitation and emancipation which posits a universal subject; even if that subject is 'no longer endowed with the power to recognize and abolish the conditions of its exploitation'. Sonyri, even though he abandoned the crudely deterministic relation which Marx posited between the contradictions of capitalism and the formation of a (homogeneous) revolutionary subjectivity, still insisted that differends could only be phrased through descriptions of the (objective) antagonism between capital and labour: 'Our differend was without remedy', Lyotard remarks of Sonyri, 'from the moment one of us contested or even suspected Marxism's ability to express the changes in the contemporary world' [*ibid*, 49].

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67. *The Differend*, ¶260-262.

68. *Ibid.*, ¶263.

69. *Hegel Contra Sociology*, 220.

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## Conclusion Metaphysics, Critical Thought, and Speculation

*The Differend*, I have argued throughout, is an attempt to expound an ethical relation of thinking to being, or 'presence'. This relation is developed through Lyotard's appropriation of heterogeneity and incommensurability from the 'representation discourse' of Kant's critical philosophy; and I have argued that this appropriation produces a culture of subjectivity, which is unable to judge either ethically or politically. What distinguishes the project of *The Differend* from Lyotard's earlier effort to repudiate the 'foundational' claims of conceptual thought, is the attempt to articulate a 'critical' activity which is co-present with the realms of legitimacy (genres) it constantly calls into question. The speculative position I have developed therefore, is a critique of Lyotard's presentation of critical activity: it engages with a project which is concerned to bring judgement directly to bear upon the forms and categories of representational thought.

The polemic which Lyotard pursues in *Libidinal Economy*, develops the idea that every form of representational thinking pursues a desire to organize and control the unintuitable, undelimitable intensity of the 'libidinal band'. The possibility of this conceptual representation is articulated through a spontaneously disjoining activity which Lyotard calls the 'libidinal bar'. This activity, which is now taken up into, now distinguished from, the intensity of the libidinal band, is the possibility of conceptuality. The inexplicable 'slowing down' of the libidinal bar, is for Lyotard the condition of the oppositions through which conceptual thought marginalizes the intensity of libidinal energy,

The turning bar slackens its pace, the mad, aleatory movement which engenders the libidinal band is sufficiently checked so that the this and the not-this, confused by its extremely high speed in all the points of the field, now distinct, are sometimes the this, sometimes the not-this... The bar becomes a frontier, not to be crossed on point of confusion, sin against the concept, transgression, stupidity, madness, primitive thought. [*Libidinal Economy*, 24]



The position which Lyotard develops in *Libidinal Economy* therefore, is an attempt to present representational thought within an economy of displacements; that is, to show that theory and conceptuality are always effects of the 'aleatory' activity of the libidinal band.

The substance of *Libidinal Economy's* presentation of representational thinking, is the constant reinvokation of displacement of libidinal energy as the condition of conceptuality. For Lyotard, every conceptual form exacts a desire to fix the pure singularities of the libido within a particular space: libidinal economy, in other words, presents the 'theatre' of representations as dramatizing the modifications of libidinal energy. Thus, the terms through which Lyotard articulates the 'idea' of this economy, can only be presented through their co-presence with the representational forms which they threaten,

Libidinal economy is a disorder of machines, if you will; but what for ever prevents the hope of producing the systematization and functionally complete description of it, is that, as opposed to dynamics, which is the theory of systems of energy ... the idea of libidinal economy is all the time rendered virtually impossible by the indiscernibility of the two instances.  
[*Libidinal Economy*, 30]

The 'death drive', which Lyotard presents as the dissolution of conceptual forms, cannot be understood simply as an alterity opposed to 'theatrical' representation. Rather, *Libidinal Economy* attempts to bring the critiques enacted within the theatre of representation, within the terms of energetic force and displacement.

In the first of a series of lectures published under the title of *Peregrinations: Law, Form, Event*, Lyotard states, 'Unfortunately, following nothing but the intensities of affects, does not allow us to separate the wheat from the chaff. Because everything has value according to its energetic force, the law might not exist and the monk might really be a devil ...'.<sup>1</sup> This concern with thinking's ethical relation to the event, is what informs the project of *The Differend*. Lyotard's transcription of Kant's critical philosophy, I have argued, is an attempt to expound a critical activity of thought which is sensitive to the heterogeneity of genres of discourse. This sensitivity is articulated in *The*



*Differend* as critique: it is a spontaneous reception of incommensurability among particular genres of discourse. Thus, Lyotard's account of representation in *The Differend*, is distinguished from the terms of *Libidinal Economy*, by its exposition of judgement as the responsibility of thinking to its originary spontaneity. The wrong and victimization which is determined by generic discourses, must be phrased explicitly; and it is through its phrasing that the ethical significance of difference is constantly re-formed.

It is through the reading of Kant presented in *The Differend*, that Lyotard brings the formative-disintegrative power of 'unrepresentability' within the terms of (ethical and political) critique. The moments of conjunction (*Darstellung*) articulated in the critical philosophy, are transcribed as disclosing incommensurability as the ontic determination of representational thought: the faculties of the subject are presented as discrete, juridical forms which 'litigate' constantly with each other. Thus, Lyotard's reading of the 'Analytic of The Sublime' articulates a feeling (negative pleasure) of incommensurability which is grounded in the heterogeneity of discourses, and which is the condition of ethical and political judgements. The 'unrepresentable' is no longer the 'primary process' which both threatens and conditions conceptual thought; it is rather the 'delegitimizing' condition of the legitimacy of genres of discourse. The unpredetermined judgement which Lyotard expounds in *The Differend*, is an immediate sensitivity to the otherness which is always co-present with the categories of representational thought. It is the appropriation of this idea from Kant's critical philosophy which gives *The Differend* its explicitly ethical significance, and which constitutes the necessity of speculative exposition.

The claim I have advanced in my reading of *The Differend*, is that the fundamental ideas through which Lyotard expounds his ethical and political philosophy (obligation without conditions, unpredetermined judgement and unrepresentable political affection) are violently abstracted from the critical philosophy's discourses of (immanent) mediation. This reading of critical



philosophy must be conceived in terms of the idea of metaphysics which Lyotard develops through his expositions of both Kant and Hegel. According to his understanding, the 'metaphysical genre' attempts to ground appearances in conditions which are absolutely independent of all contingency and difference. The immediate presentation of the phrase is explicated in *The Differend* as the other of this project; for the absolute which metaphysics presents as the condition of appearances, is always already relative to the 'universe' in which it is presented. For Lyotard, the notion of 'experience' as the reception and organization of representations, is *a priori* metaphysical: it is the phrase, and its spontaneous linkage onto the event, which is original (indubitable), and which is the presupposition of the syntheses effectuated by the 'I' of subjectivity,

The possibility of reality, including the reality of the subject, is fixed in networks of names 'before' reality shows itself and signifies itself in an experience. [*The Differend*, ¶72]

Metaphysics therefore, 'struggles against [the] oblivion'<sup>2</sup> of presentation: it attempts to bring the (unpredetermined) spontaneity of 'linkage' under the control of foundational forms and categories.

Lyotard's reading of the critical philosophy, attempts to show that the forms and categories of cognition, or representation, through which Kant expounds transcendental subjectivity, depend upon metaphysical ideas of reason to guarantee the unity ('congruence') of experience. His claim is that the practical and theoretical cognitions of the critical subject, are originally sensitive to the heterogeneity which they organize; and that Kant, in 'negotiating' this exteriority, discloses thinking's immediate receptiveness to the 'unrepresentable'. It is the account of reflective judgement given in the *Third Critique*, which, on Lyotard's reading, establishes this receptiveness as both the condition and negation of legitimacy. The absence of determinate concepts in the reception of aesthetic and teleological finalities, is abstracted from the development of the *Third Critique*, and presented in *The Differend* as a spontaneous activity independent of the rules of generic discourses. Thus, the notion of judgement which is expounded in the *Third Critique*, is conceived by



Lyotard as the point at which Kant's 'metaphysical' representation of the experience and autonomy of the subject, is displaced by a 'critical activity' which pervades his account of transcendental faculties. For Lyotard, Kant's reflective judgement is not a faculty, but the condition of discrete transcendental functions: it is the condition which Lyotard presents as opening up the possibility of non-metaphysical philosophy, politics and ethics.

*The Differend's* account of transcendental idealism, sets out to show that the spontaneous reception of difference disclosed through reflective judgements, is conjoined with attempts to reduce that difference through metaphysical forms and categories. Lyotard's reading of each of Kant's three *Critiques*, and of the political essays, is concerned with the possibility of *Darstellung*, that is, with the possibility of conjoining the immediacy and contingency of events, with the cognitive conditions through which they are 'experienced'. The critical philosophy, according to this reading, discloses a tension between the 'unrepresentable' element which exists as other to the transcendental I, and the activity of that I in constituting the unity of itself and its representations. In his account of the *First Critique*, Lyotard attempts to show that this tension is disclosed in the relationship of modes of intuition, space and time, to the matter of sensible affection. The temporal syntheses upon which Kant's idea of a unified cognitive experience depends, presupposes a heterogeneity (otherness) which the 'Transcendental Aesthetic' has not subsumed under the rules of the cognitive genre. In the *Second Critique*, the persistence of this unrepresentability is negotiated through the 'type', by which duty is enabled to represent itself within a realm of 'congruent' human ends. Lyotard's transcription of the *Third Critique*, with its concentration on the tension between the faculties of reason and imagination expounded in the 'Analytic of The Sublime', presents the notion of reflective judgement as an immediate sensitivity of thought to the otherness 'negotiated' by Kant in the *First* and *Second Critiques*. The moments of conjoining, or *Darstellung*, which Lyotard focuses on in his transcriptions of practical and theoretical reason, are produced through a 'metaphysical' presupposition of 'reality'<sup>3</sup> as prior to the



immediate reception of difference. What Lyotard understands as metaphysical elements of the critical philosophy therefore, are presented as originally sensitive to the heterogeneity which they attempt to homogenize. It is this sensitivity which *The Differend* presents as distinguishing the Kantian project, from the totalizing metaphysics of Hegel's speculative philosophy,

With the notion of the sublime (and on the condition that *Darstellung* be understood as we have here), Kant will always get the better of Hegel. The *Erhabene* persists, not over and beyond, but right at the heart of the *Aufgehoben*. [*The Differend*, ¶126]

For Lyotard, the activity of Kant's transcendental I, both in the constitution of experience, and its practical self-determination, constantly rediscloses the heterogeneity (otherness) which springs from representational thought. *Darstellung*, the moment of conjunction, necessitates unpredetermined judgement; for neither practical nor theoretical reason can 'fill in the abyss'<sup>4</sup> between its object (the unity of experience of objects, or the unity of human ends), and the otherness which it receives. The faculties of the critical subject are not, according to this transcription, fixed, analytic unities, but critically related realms whose legitimacy is judged and re-judged, one by the other. On this reading, the account of reflective finality given in the *Third Critique*, articulates an originating power of judgement within the transcendental I, which is the negation of subjectivity and experience. Kant's 'Analytic of The Sublime' is presented in *The Differend* as the reception of an incommensurability which, momentarily and irreversible, disperses the I and its experience into the 'critical activity' of judgement. For Lyotard, it is Kant's account of sublime affection which displaces the presence of a subject, and forecloses on the possibility of 'ethico-teleology'.<sup>5</sup> It is this dispersal of the transcendental I in the immediate reception of the sublime (negative pleasure) which Lyotard opposes to Hegel's 'metaphysical' history of the self (*Selbst*).

The relationship between metaphysics and thinking's critical activity, which, for Lyotard, is articulated in Kant's transcendental idealism, is one of disclosure: judgement is revealed as a spontaneous reception of difference



opposed to the fixed determinations of cognitive reception. The 'incommensurability' of ideas with the faculty of representations which produces the negative pleasure of the sublime, cannot be postulated in terms of *a priori* syntheses: each ought to make the same subjective judgement, but does not do so necessarily. Thus, the 'Analytic of The Sublime' opens up the possibility of a philosophy which eschews metaphysics. For Lyotard, Kant's account of the conceptless immediacy through which aesthetic finality is received, discloses the 'philosophical' relation of thinking to the occurrence: phrasing in the absence of a determinate rule of judgement,

The stakes of philosophical discourse are in a rule (or rules) which remains to be sought, and to which the discourse cannot be made to conform before the rule has been found. [*The Differend*, 97]

The presence of the transcendental I, sustained in the critical philosophy through determinate practical and theoretical judgements and cognitions, is displaced by a critical activity which cannot be represented.

The relationship of speculative thinking to the metaphysical genre however, is presented in *The Differend* as one of identity: Hegel's 'dialecticizing' of the actual<sup>6</sup>, for Lyotard, constitutes the annexation of difference to a single, suppressive form: the *Selbst*,

The objection can be raised that it [the *Selbst*] is a rule for a genre of discourse - the metaphysical genre - which seeks to engender its own rules, but precisely that this rule cannot engender itself from discourse. [*The Differend*, 97]

Kant's retention of exteriority throughout his moral, political and epistemological writings, is read by Lyotard as necessitating a spontaneous relation of thought to otherness and difference. Each moment of linkage ought to be without conceptual or cognitive predetermination. Speculative thinking however, is conceived as presupposing a unity which has all substantive difference immanently present within it. Linkage from one phrase to another is subsumed under the operations of a result (*Resultät*) which is present from the beginning of dialectical 'equivocation' and 'derivation'. The forms and categories through which difference is articulated in speculative thought, according to

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Lyotard's reading, suppress the spontaneity of linkage: otherness has always already been taken into the objective development of the self. Thus, *The Differend* presents speculative thinking as utterly metaphysical: the syntheses of subject and object which it 'effectuates', are representable only because the *Selbst* is postulated prior to the contingency of the event.

The argument I have developed attempts to show that it is Lyotard's misreading of critical philosophy, which lies at the heart of the ethical and political aporias constituted in *The Differend*. The specific claims I have made concerning Lyotard's analyses of the Kantian concepts of cognitive experience, moral obligation, reflective judgement and the reception of historical progress, develop a critique which originates in Hegel's own rejection of metaphysics. The first chapter of the thesis therefore, is concerned to refute Lyotard's claim that speculative thinking is an abstract method which imposes the dialectical substantiation of the *Selbst* upon the contingency of historical events. My claim is that speculative phenomenology's account of the development of self-consciousness, grounds the necessity of mediation between subject and object ('truth and knowledge') in the historical contradictions of abstract understanding. Lyotard's conception of the *Selbst* as a *Resultät* presupposed at the 'beginning' of the *Phenomenology*, misrepresents the historicity of this exposition: absolute self-recognition is consciousness' re-cognition of the finite historical 'elements' which continue to form and contradict its freedom.

Lyotard, in developing the ethical significance of his notion of differend, attempts to show that the event of 'Auschwitz' puts an end to universal identity, and the possibility of dialectical sublation. The moments of legislation and obligation determined in the racial mythology of Nazism, cannot, on Lyotard's reading, contribute to the development of ethical recognition. The obligation to which the deportee is subject is simply to die; for the law of the SS requires no more of him or her than he or she should cease to exist. The forms of law and obligation which determine the Nazi slaughter, are presented in *The Differend* as absolutely heterogeneous elements which can engender no

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determinate contradiction, or more substantive self-recognition. Following Adorno, Lyotard claims that speculative thought is 'blocked' at Auschwitz.

This conception of the Holocaust however, fails to recognize the profoundly speculative significance of a 'law' which is grounded in the subjective idealization of freedom and humanity. The reading of Hegel's account of the French Revolution developed in chapter one, shows that Lyotard's attempt to distinguish radically the Nazi and Jacobin 'terrors'<sup>7</sup>, is dependent upon his misrepresentation of speculative thought as an abstract method. As the most violently contradictory 'culture' of subjectivity, the abstract materialism of the French Enlightenment, constitutes an absolute denial of the 'lawless' social relations which are its precondition. The self-consciousness produced by the French Enlightenment is determined through an absolute opposition to the ethical relations which form it. Lyotard's claim that the event of the death camps ruptures the metaphysical identity presupposed by speculative thinking, is founded upon a misrecognition of Nazism's relationship to the actual social relations which produce it. The fundamental determinations of Nazism, that is, the lawlessness of ethical life, the reformatory vocation of subjectivity and the belief in the mythology of the 'Aryan' race, produce a 'culture' of consciousness which results in the dissolution and ultimate destruction of the state. By taking 'Auschwitz' as Nazism's uniquely exceptive (destructive) relation to the other, Lyotard ignores the disintegrative impact which it has upon the substance of the state. The evil of the genocide therefore, must be conceived as part of an extreme and deeply contradictory 'culture', whose objective necessity is the destruction of its own particular ethical life. Nazism can and must be recognized as a radical deformation of subjectivity, which is grounded in the historical development of natural consciousness, and which is retraversed in spirit's 'reflective'<sup>8</sup> self-recognition.

For Hegel, the 'culture' of the French Revolution, produces the 'moral autonomy' of the will as a concrete necessity for 'natural' consciousness. The particularity of this sublation however, does not determine the 'distinctiveness',

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or 'specific existence', of the form of alienated spirit preserved in absolute self-recognition. In thinking itself through the concrete elements of ethical life, self-consciousness returns to the culture of absolute re-formation as a violence which is utterly non-ethical. Speculative thinking does not depend upon the recognition of new contradictions from the substance of actual states: its freedom is the power to determine its existence through 'self-recollection' of the forms through which it has developed.

The claim which Lyotard develops in *The Differend*, that speculative phenomenology is metaphysics, depends upon his failure to acknowledge the development of the *Selbst*, as the history of *Verstande*, that is, of abstract understanding. On this reading, difference can only be received as an unincorporable, insubstantive negativity - the differend- which occurs spontaneously among and between genres of discourse and phrase régimes. Lyotard's presentation of the critical philosophy attempts to show that the otherness to which Kant's transcendental faculties are originally related, discloses the impossibility of including the occurrence within the communicable forms and structures of foundationalist thought. The experience of 'incommensurability'<sup>9</sup> which Lyotard abstracts from Kant's transcendental arguments, is re-presented in *The Differend* as disclosing the ethical necessity of spontaneous judgement. This re-presentation however, fails to acknowledge the lack of mediation which produces the aporetic experience of the critical subject. The formal categories through which Kant attempts to articulate the necessity of practical and theoretical reason, presuppose an abstract difference whose 'immediacy' Hegel expounds in its historical construction. The immediacy ('matter' of intuition, formally free will) which Lyotard presents as disclosing the critical subject's sensitivity to difference, is expounded through the relation of this subjectivity to the social relations in which it is embedded. Hegel's reading of Kant's philosophy of transcendental faculties is grounded in a thoroughgoing account of the actuality of difference (i.e. the concrete elements of ethical life), and the relationship of subjective self-recognition to the substance of that difference. *The Differend's* presentation of speculative



phenomenology as the abstract imposition of a 'metaphysical' unity (the *Selbst*) therefore, fails to recognize the historical nature of the contradictions through which Hegel articulates the relation of critical subjectivity to ethical life. Consciousness' 'reflective' self-recognition is a recognition of the necessity and insufficiency of *Verstande*; it is not subjectivity's suppressive satisfaction with fixed and unchanging forms of representation.

It is Hegel and Lyotard's respective expositions of the relationship of otherness, or exteriority, to the transcendental subject, which is at stake throughout the rest of the thesis. The critique of *The Differend* which I have developed, argues that Lyotard's attempt to articulate ethical, political and epistemological necessity in terms of the spontaneity of linkage and judgement, is dependent upon his appropriation of fundamentally aporetic moments in the critical philosophy. Each of the 'Kant notices' through which Lyotard abstracts the experience of otherness (heterogeneity) from the critical philosophy, represents a contradictory form of self-consciousness which is set against the substantive necessities of mediation, communication and re-cognition. Thus, *The Differend* develops a metaphysics of 'presentation' which posits subjectivity as a negative moment opposed to every objective form and institution.

The first of *The Differend's* 'notices' on Kant appears in the section on 'Presentation'. In this section, Lyotard attempts to show that the phrase is the irreducible occurrence of linkage which constantly re-situates thinking in relation to the legitimacy of genres of discourse. Presentations are conceived as atomistic 'universes', or dispositions of addressor, addressee, sense and referent, which link onto the current phrase, but which, as 'events', remain undetermined by it. The indubitability of the phrase is its simple irreducibility: being is always presented; is always re-formed through the spontaneity of the event. It is this distinction of metalinguistic 'representations' of being, from the immediate 'presentation' of the phrase, which informs Lyotard's notion of critical judgement as openness to the infinite possibility of the present. For Lyotard therefore, Kant's doctrine of experience begins with the assumption



that what can be known of the universe of events, must be reducible to faculties of a transcendental subject; and that knowledge as such always involves representation,

Metaphysical illusion consists in treating a presentation like a situation ... A given is given to a subject who receives it and deals with it. To deal with it is to situate it, to place it in a phrase universe. We can follow this operation at the beginning of the Transcendental Aesthetic. [*The Differend*, 61]

Kant's account of the necessity of spatio-temporal intuition to experience, is presented in *The Differend* as the ground of a cognitive domination of the occurrence. Lyotard's claim is that the 'ostensive regime' through which the form of outer sense is articulated, constitutes the suppression of two heterogeneous 'idioms': matter/affection and intuition/ostension. The possibility of determinate judgements is conceived as arising through this original 'situation' of the 'given' within the rules of the cognitive genre. It is the primary moment of *Darstellung*, or conjoining, effected in the 'Transcendental Aesthetic'<sup>10</sup>, which is presented as disclosing the homogenizing force of the critical subject. For Lyotard, the critical philosophy's conjoining (*Darstellung*) of otherness ('matter') of affection, with the 'ostensive' forms of intuition, situates the totality of subjective judgements within the cognitive ('representation') genre. The otherness which the critical subject receives as the 'matter' of affection, is always already reduced to the necessity of representation. Thus, Lyotard presents the activity of the Kantian faculties as a constant play of 'juridical' representations, in which the objects presented 'confront, criticize, aggrieve and disrupt' each other within the subject. The aesthetic, the moral, the theoretical all litigate with one another, excluding the possibility of phrasing the differends which arise from representation.

The second chapter is concerned specifically with the deployment of Kant in *The Differend's* account of presentation. Lyotard's reading of the 'Transcendental Aesthetic' as an original negotiation of the occurrence, and his subsequent claim that transcendental faculties constantly 'litigate' with one another, involves an attribution of self-consciousness to critical subjectivity



which cannot be substantiated. My argument is that Hegel's exposition of 'consciousness', set out at the beginning of the *Phenomenology*, shows that none of the subject-object relations presupposed by critical subjectivity are capable of producing concrete self-awareness. Lyotard's 'juridical' conception of *a priori* faculties, which posits an original judgement of the occurrence as an otherness to be incorporated, fails to recognize that the relationship of affection and understanding (cognition) excludes such an 'ethical' reception of otherness. Speculatively conceived, the discursive and intuitive faculties posited in the critical philosophy, exclude substantive self-recognition: it is through the aporetic structure of phenomenal experience that the actuality of the self, its work, satisfaction and desire, is historically constituted. This 'juridical' conception of the critical subject presupposes an identity of self-consciousness with each of the subject's constitutive activities; the immediate occurrence of each critical phrase is posited as the necessity of an inner litigation which ruptures the unity of representation. It is only by abstracting the faculties of the Kantian subject from their actual determination of self-consciousness, that Lyotard is able to present the *First Critique* as a suppression of the absolute contingency of linkage onto the occurrence.

Lyotard's 'juridical' reading of transcendental subjectivity fails to recognize the significance of Hegel's speculative critique of Kant's epistemology: that the negativity of consciousness which emerges from phenomenal experience, can only become self-conscious through confirmation in the other. What is represented in the forms of master and slave, are the conditions necessary to the development of self-consciousness through concrete misrecognition. The transitions which Hegel sets out in the *Phenomenology*, expound the necessity of re-cognizing the actual conditions which produce these misrecognitions: thus, Lyotard's claim that it is the simple immediacy of the phrase which opens up the possibility of ethical judgement, rests upon the abstract proposition of 'thinking' as undetermined by any necessity other than the contingency of linkage. This original spontaneity however, presupposes a form of self-consciousness which is constituted in the emergence of bourgeois property



relations. The external separation and difference (civil society) through which abstract judgements of the other are made possible, is a form which develops through the historical mediations of subject and object. The critical subject's relation to contingency and difference is not 'metaphysical': its synthetic activity is part of a development in which the other is ethically mediated in each particular will.

*The Differend's* remaining three 'notices' on Kant, attempt to articulate the possibility of 'non-metaphysical' ethics, politics and history, 'disclosed' in the critical philosophy. In the second of these, Lyotard develops a reading of the critical morality which argues that the idea of duty, suppresses the original freedom which Kant assumes as the formal condition of rational autonomy. 'Obligation without conditions'<sup>11</sup>, according to this account, cannot be conceived simply as the exclusion of inclination (heteronomous causality); the freedom of linkage onto the current phrase can only be sustained through the complete absence of 'representational' conditions, including the idea of a realm of 'congruent' human ends.<sup>12</sup> For Lyotard, Kant's assumption of a spontaneous 'free will' as the undeducible condition of the moral law, immediately forecloses on the possibility of such a community. Autonomy is presented in *The Differend* as the absolutely unconditioned moment of judgement which obligates through its pure immediacy. The essence of Lyotard's reading of the *Second Critique* is presented in this conception of the absolute discontinuity of 'ethical time' and serial causality. 'Performative causality'<sup>13</sup> is immediate resistance to homogenization and communicability: for Lyotard there can be no necessary production from the ethical phrase, not even the 'suprasensible idea' of a realm of human ends. 'Obligation' to the difference of the other is always received in the absence of representational forms and categories.

The second chapter of the thesis developed the claim that it is the lack of unity in the practical and theoretical forms of the critical subject, which reflects and sustains the dominance of the subjective particular in social relations. The fundamental question arising from Lyotard's transcription of the *Second*



*Critique*, concerns how the 'power' of spontaneous causality, which Kant attributes to the purely formal independence of the will, contributes to the historical development of consciousness towards self-recognition. The argument set out in chapter three, shows that the forms of agency and passivity, through which the moral will is expounded in the *Phenomenology*, constitute aporetic relations of concept and object, subjectivity and actuality, which can only be explicated speculatively. The necessity which emerges from consciousness' 'moral view of the world'<sup>14</sup> constitutes an implicit recognition of the law as active mediation of subject and object: critical morality is the form through which spontaneous reception of the right, is sublated in the concept of the law. It is this sublation which is the historical condition of the logical, ethical and political necessity which Hegel expounds through the law of the notion. By extending the *Phenomenology's* critique of abstract self-legislation to *The Differend's* idea of obligation, I have argued that Lyotard's idea of spontaneous reception of difference is afflicted by the same aporias as Kant's moral will.

Ethical necessity is presented in *The Differend* as the sensitivity of thought to the silence which 'signs' wrong and differend; as the necessity of finding 'idioms' in which to phrase the unphraseable. This ethical sensitivity of thought to the incommensurability of discourses, is suppressed by the normative phrase: the spontaneity of linkage onto the present is excluded through the constitution of an ethical community in which justice is represented as a congruent finality. On this reading, normative phrases, which for Lyotard constitute the transcendental illusion of community, impose a sanctioned, legal citizenship upon the individualities which are dispersed throughout a plurality of heterogeneous discourses. The law as such, is imposed upon individualities which are ontologically dispersed, and which, for Lyotard, have the responsibility of delegitimizing the law.

Lyotard's concept of individuality's ethical relation to the law, constitutes a 'culture' of subjective judgement which is rooted in his reading of Kant's attempt to give content to the spontaneity of free will. The *Phenomenology's*

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exposition of conscience has shown that the categorical demand of the moral law is incapable of building the abstract particular to a community of rational ends; and that the guarantor of ethical activity, Kant's transcendental God, becomes immediately one with self-conviction. The speculative significance of this unity is its reinforcement of abstract separation and difference; a reinforcement which is capable of legitimizing any act of use or disposal. The critique of subjective morality which Hegel articulates in the *Philosophy of Right*, shows that a volition which acknowledges only its immediate reception of the good, lapses into an 'irony' which 'substitutes a void for the whole content of ethics, rights, duties and laws'.<sup>15</sup> Lyotard's attempt to present obligation as a spontaneous unity of ethical feeling and its expression therefore, fails to recognize Hegel's exposition of the critical subject's negative relation to the law. The formal possibility of freedom which Lyotard abstracts from Kant's exposition of moral necessity, conditions an idea of a 'presuppositionless' judgement which is incapable of giving ethical significance to the other.

The final chapter of my thesis is concerned to show the impossibility of an ethical politics based upon the 'conceptless' judgement which Lyotard abstracts from the *Third Critique*, and the political essays. The conceptions of politics and community which Lyotard develops in *The Differend's* section 'Genre, Norm', and in his essay '*Sensus Communis*', are informed by the idea of 'obligation' which is speculatively criticized in chapter three. 'The political' is understood by Lyotard as entailed in the possibility of the ethical: the pure subjective spontaneity of thinking in relation to established realms of legitimacy (genres), is the end, or non-end, of political discourse. The fundamental problem with this judgement, I have argued, stems from the lack of objectivity which Lyotard privileges in his reading of the critique of judgement. By abstracting the non-cognitive, undeterminable, moment of aesthetic finality from the body of Kant's *Third Critique*, and attempting to establish its reception as the disclosure of a genuinely 'critical' judgement, Lyotard forecloses on the possibility of an ethical politics. The exposition of judgement set out in the *Science of Logic* and the *Encyclopaedia of The*



*Philosophical Sciences*, and the place which this occupies in the development of the notion as such, constitutes a profound critique of Kant's subjectivization of finality, and *a fortiori*, Lyotard's notions of politics and community.

The power of Hegel's reading of the *Third Critique*, is that it does not abstractly privilege or exclude either of the forms finality through which Kant expounds the faculty of judgement. *The Differend's* 'forensic' understanding of Kant's critical subjectivity is founded upon exactly this kind of abstraction. For in trying to rid 'critical activity' of its attachment to the goal of unified experience, Lyotard externally privileges the aesthetic moment in which judgement is based only upon the formal, subjective reception of unity. The *Critique of Judgement* comprises the aesthetic and teleological forms of reflective judgement; it expounds the reception of finality in both formal and theoretical moments. Theoretical cognition of nature as an 'object of sense' cannot determine a unity of appearances *a priori*: its constitution of the object produces a 'boundary' between things-in-themselves and phenomena. Judgement is the faculty through which noumenal and phenomenal causality is (subjectively) mediated; for it provides a substrate of unity in particular empirical laws which, for Kant, is 'merely reflective and does not determine objects'.<sup>16</sup> It is in the notion of teleology, or nature's thoroughgoing purposiveness, that the *Third Critique* discloses the necessity immanent in reflective judgement: that the objects of practical and theoretical reason (rational freedom and phenomenal nature) are unreal abstractions which must be brought into differentiated identity.

The fundamental significance of Kant's idea of reflective judgement, is expounded in the 'Subjective Notion'.<sup>17</sup> The contradiction inherent in each of the moments of Hegel's logical exposition of judgement, is the separateness of subjectivity and actuality. 'Qualitative', 'reflective', 'necessary' and 'notional' forms of judgement, are all, as Lyotard maintains of Kant's judgement of taste, 'only in principle communicable': it is not until the activity of judging is set in reality by the syllogism, that subjective thought begins the transition to



objectivity, i.e. begins to think itself as constitutive of actuality. This recognition is realized in the forms of objectivity that are produced from the development of the syllogism; teleology, the highest of these forms, is the category in which the concrete unity of notion and objectivity (the idea as such) is made explicitly necessary.

By expounding the displacement of actuality presented in the critical philosophy as the precondition of the notion's negative self-relation, Hegel discloses the necessity of 'thinking' and ethical life which is not assimilated to, or reinforcing of, the domination inherent in external separation and difference. The *Phenomenology* has shown how the development of natural consciousness is the history of misrecognition, in which difference and identity appear in abstract, non-spiritual relations to each other. The idea of judgement set out in *The Differend* presupposes the same lack of mediation which the *Phenomenology* sets out in its exposition of moral consciousness, and which Kant attempts to reconcile in the *Third Critique*. By abstracting the reflective judgement of taste from its cognitive preconditions, Lyotard's notion of a spontaneous 'critical activity' of thought, fixes difference as a pure subjective contingency never actual.

The historical development of subjectivity which Hegel sets out in the *Phenomenology* however, does not impose the metaphysical being of the *Selbst* upon difference and contingency. Absolute knowledge is a 'Resultät' only in the sense of its being concretely produced and sustained by the aporias of misrecognition, and their displacement of self-consciousness' actuality (work, satisfaction and desire). For Hegel there is neither a 'natural beginning' nor a 'utopian end' to history; spirit knowing itself is subjectivity's recognition of the 'elements' in which its relationship to the infinite is both realized and unrealizable. In absolute knowledge, the abstract moments through which natural consciousness misrecognizes itself, become identical with the recognition that the substance of spirit is concrete with its historical differentiation. Historical events do not come to an end with this recognition; it

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is merely that contingency and particularity are re-cognized (judged) in relation to the totality of subjective and objective conditions which produce them, that is, the actuality of the historical form in which they appear. Substantive ethical and political judgements therefore, proceed from the unity of the constitution with the difference and particularity which constitute ethical life. The unity which Hegel expounds in the *Philosophy of Right*, is the activity of concrete mind, or 'substantial will', in relation to the subjective moments in which it is both actual and non-actual. The realization of subjective willing in the objective freedom of the notion does not suppress the 'volition of particular ends'; these 'ends' constitute the actual particularity and difference through which the authority of objective mind is exercised. Absolute knowing, as it is actualized in the *Rechtstaat*, is not the oppressive 'being' of a determined and determinate authority; it is the infinite activity of spirit cognizing and re-cognizing, judging and re-judging, its appearance in the substance of ethical life.

The spontaneity of thought which Lyotard presents in *The Differend* as resistance to representation and communicability, depends upon abstraction of the aesthetic from the totality of Kant's exposition of judgement. The critical philosophy's separation of autonomy and heteronomy is reinforced by Lyotard's positing of the subjective moment of taste (the free play of imagination and understanding) as independent of the *Third Critique's* immanent development of finality. However, it is the 'Analytic of The Sublime', with its account of the aesthetic antinomy of representation and conception, that Lyotard takes as the crucial moment of disclosure in Kant's philosophy. For it is here, according to *The Differend's* final 'notice'<sup>18</sup>, that the impossibility of 'passages' between different genres and phrase regimes is formulated within the terms of transcendental idealism. For Lyotard, the experience of incommensurability which Kant expounds as the (*a priori*) ground of sublime affection, is the experience of the 'unpresentable' as such: the antinomy of reason and imagination discloses thinking's political responsibility to its (ontological) experience of heterogeneity. I have argued that this subjectivizing account of Kant's aesthetic finality, fails to acknowledge the speculative necessity



constituted in the idea of negative pleasure; and that the historico-political problematic which Lyotard abstracts from the 'Analytic of The Sublime', constitutes an aporetic opposition of the subject to the formative actuality (*Sittlichkeit*) in and through which it exists. The differentiation which Lyotard posits as absolutely heterogeneous and incommensurable, can only be truly expounded by self-consciousness' misrecognition of its (universal) work, desire and otherness.

Lyotard's understanding of the sublime is of an experience of incommensurability as such: it is presented in *The Differend* as disclosing a 'critical activity' permanently 'agitated' by the difference of generic discourses. Kant's exposition of the sublime in the *Third Critique* however, is not an original (*a priori*) reception of incommensurability; it is conditioned by a posting of imagination and understanding as abstractly separate. The 'reflective' reconciliation of subject and object which Kant expounds in his idea of the sublime, presupposes the *First Critique's* positing of understanding and sensible affection in a relation of abstract opposition. The *Third Critique's* concept of a sublime vacillation between pleasure in the capacity for ideas, and pain at their unrepresentability, is possible only on the presupposition of an 'experience' produced through the domination of the concept (*Verstande*) over intuition (*Vorstellung*). The Kantian subject, in its *a priori* exclusion from the content of phenomenal representation, can recognize itself only in its infinite failure to represent nature as a self-determining totality. Critical philosophy's abstract separation of understanding and intuition forecloses upon the possibility of re-cognizing substantive freedom. Thus, the relation of the subject to the constitution of objectivity expounded in the 'Analytic of The Sublime', is the *Third Critique's* most explicitly aporetic moment: the object, nature as totality, is disclosed as thinkable only through mediation of concept and intuition, sense and idea, which Kant posits as impossible *a priori*. The empirical reflection through which sensible affections are presented to the faculty of ideas, posits an external relation of thinking and actuality: each empirical predicate 'appears' as part of an infinite series which never discloses



the substance of subjectivity.

Lyotard's failure to acknowledge the aporetic structure of Kant's idea of the sublime, and the contradictions entailed in its historico-political significance as 'enthusiasm', is, I have argued, fundamental to his transcription of political judgement as immediate spontaneity. The presupposition of Kant's philosophical history, that is, the history of humanity's 'improvement', is his conception of aesthetic finality. The critical subject, which the *First* and *Second Critiques* attempt to establish as epistemologically and practically active in relation to sensible affection, emerges from the 'Analytic of The Sublime' in a state of (ontologically) indeterminate agitation which can find no substantive fulfilment. The idea of freedom, in other words, is placed permanently beyond representation: for Lyotard it is the immediacy (spontaneity) of 'linkage' onto the current phrase.

This reading of Kant's idea of the sign of history, fails to recognize the abstract separation and difference through which he understands the possibility of the social, is itself the precondition of mediation. The *Third Critique's* section on 'The ultimate end of nature as a teleological system' makes it clear that the 'culture of skill' through which reason develops its independence from immediate inclination, produced through an antagonism of particular ends which must be opposed by a lawful authority centred in a whole, called a civil community.<sup>19</sup> The 'cosmopolitan whole' which is the object of Kant's political judgement however, is thinkable as a 'formation' only through the abstract separation and difference it presupposes i.e. the reflective relations of civil society. The formation of the subject must be acknowledged as part of the actuality of the whole (*Sittlichkeit*); for it is the bourgeois subject's abstract individuality which underlies Kant's concept of reflective (non-cognitive, conceptless) apprehension of ethical identity. Lyotard's rejection of Kant's *Begebenheit*, i.e. the disinterested enthusiasm of the spectator, as 'signifying' a finality of ethical and political 'congruence', posits the infinite vacillation of the sublime as absolutely independent of the concrete national



forms into which spirit differentiates itself. The moment of subjective affection, which Lyotard conceives as the experience of incommensurability as such, is posited as completely independent of the immanent mediation (civil community) which Kant's historical enthusiasm presupposes.

The concept of 'generic' knowledges, which Lyotard expounds as the end (termination) of homogeneous 'community' and the beginning of modern and postmodern cultures, is completely abstracted from the social relations which produce the necessity for specialized forms of knowledge. The needs through which these knowledges are constituted are specifically social; they develop through a 'division of concrete need into single parts and aspects which in turn become different needs, particularized and more abstract'.<sup>20</sup> This differentiation of material into 'abstract' need, is the precondition of the philosophical, scientific, and technical knowledges which constitute the finitude of the ethical idea: it is not until the subject emerges as reflectively aware of its abstract wants, desires and satisfactions (i.e. as bourgeois), that the formation of these elements is possible. The specialized knowledges which, for Lyotard, mark the end of the 'social "body"' as a unifying, homogeneous time, cannot function to disperse the subject into an indeterminate, incommunicable form (*sensus*) accompanying each contingent act of judgement. The knowledges constituted through the self-seeking of the subjective particular, are made possible by the transition to the bourgeois property form: 'need', which has ceased to be exclusively determined by nature, is mediated by the formative activities of those involved in the complex of productive relations.

The abstract (moral, epistemological, technical, etc.) cognitions which develop the universality immanent in pure self-seeking, presuppose the separation and difference of relative ethical life. They are forms of *Verstande* which posit difference as pure identity: each element is in principle estranged from the unity of the whole. As such, these knowledges are concrete with civil society's development of desire and satisfaction; they reflect and reinforce the subjective self-seeking through which need is abstractly taken into the totality

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(*Sittlichkeit*). The 'generic' knowledges which Lyotard claims are incommensurable, produce a universal development of subjectivity which cannot be encompassed within the terms of abstract separation and difference. As the 'actuality of the ethical idea'<sup>21</sup> the state is the unity of the elements of knowing sustained in ethical life. Work, satisfaction and desire, are the actuality realized in, and presupposed by, self-consciousness' abstract appropriations of objectivity; they are the finitude through which individual subjectivity recognizes itself in the being of the state.

Political judgement therefore, cannot be abstracted from the formative laws and institutions of ethical life. Within a state whose mediation of subjectivity is the principle of its institutional forms, political activity is an infinite reactualization of the 'ethical idea'. The discrete knowledges which are constituted through the separation and difference of civil society, are recognized in the state as finite forms of subjectivity which must be mediated with universal (spiritual) identity. The political activity of the state is always deliberation upon its own finitude (positedness). The contingency of knowing and willing produced in civil society is not excluded from the mediation of spirit; it is re-cognized and reintegrated into its substance. This inner, self-transparent unity confers the right and responsibility of judging the other, less mediated states, upon those whose constitutions embody the principle of finite subjectivity. Particular forms of *Sittlichkeit*, although they are finite and cannot know the truth of their relation to the absolute, are related to each other as more or less adequate re-cognitions of the ethical idea. Thus it is the right and responsibility of those nations with established rational constitutions<sup>22</sup> to judge those whose constitutions are less developed, or which have become ethically or politically deformed.

The event of 'Auschwitz', which Lyotard insists cannot be thought speculatively, must be judged in terms of the actual historical formation in which self-consciousness became radically estranged. Lyotard's critique of speculative thinking presupposes that Hegel's method of historical exposition



constitutes an abstract set of rules through which contingent events are homogenized and represented as necessary. Each historical form produces its own 'new' sublation, and thereby participates in the realization of spirit. This is a complete misrecognition and misrepresentation of Hegel's concept of speculative exposition. Each historical moment is spiritual only insofar as it is actual (finite); its content can be judged only in relation to the universality of the work, satisfaction and desire recognized and sustained by natural consciousness itself. The aporias of finite misrecognition always afflict the state; and it is this finitude which is the object of political judgements. It is only through the recognition and mediation of its own finitude that a state has the right and power to judge the ethical and political constitution of another state.

Speculative politics is non-metaphysical precisely because it does not forget the aporias and contradictions through which 'reflective' self-recognition is accomplished. Spirit never reaches the point at which its cognitions are immediate, or 'intuitive', representations of truth; for the finite elements of *Sittlichkeit* (law, constitution, work, satisfaction and desire) are always inadequate to realize its substance. The 'otherness' which is constituted through the history of natural consciousness, is re-cognized, or recollected, in those states which acknowledge their own essential finitude: spirit is the demand that particular national forms accept the guilt of their finitude, or necessary contradiction of the absolute. The substance of political judgement, in other words, is substantive difference; it is the recognition of the otherness constituted through the abstract reductivism of *Verstande*.

This conception of recollection and re-cognition of otherness in its relation to the universal, constitutes the necessity to which political judgement as such, is responsible. The politicization of the sublime, which Lyotard expounds in *The Differend*, attempts to show that Kant's concept of reflective judgement discloses an absolute negativity of thinking in relation to all 'representational' discourses. This negativity is presented as the 'delegitimization'<sup>23</sup> of every established form which it encounters; it is the immediate reception of difference

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as pure 'unrepresentability'. Nothing, in other words, is recollected by this political activity: otherness has no substantive being for judgement, and remains fixed within the 'unconscious' affection<sup>24</sup> of subjective particularity. That for Lyotard the necessity of thinking's 'humorous'<sup>25</sup> relation to the law, can survive despite the infinite responsibility of phrasing the evil perpetrated at Auschwitz, discloses the ethical bankruptcy of his concept of the political. Only by thinking spirit's violence against itself through its universal determinations, is judgement political, that is, related to the present through a historical re-cognition of difference and otherness.

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Conclusion  
Notes

1. *Peregrinations: Law, Form, Event*, 15.
  2. *The Differend*, ¶124.
  3. *Ibid.*, ¶126.
  4. See *The Differend*, 123.
  5. See Kant's *Critique of Teleological Judgement*, ¶ 83.
  6. *The Differend*, 97.
  7. *Ibid.*, ¶158 and ¶159.
  8. See the *Phenomenology's* section on 'Absolute Knowledge'.
  9. *The Differend*, 165-167.
  10. *Critique of Pure Reason*, 65-82.
  11. *The Differend*, ¶174.
  12. *Just Gaming*, 94.
  13. *The Differend*, 120-123.
  14. *Phenomenology of Mind*, 615-627.
  15. *Philosophy of Right*, note to ¶140.
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16. *Critique of Judgement*, introduction.

17. *Science of Logic*, 599-661.

18. *The Differend*, 161-171.

19. *Critique of Judgement*, 97.

20. *Philosophy of Right*, ¶196-¶198.

21. *Ibid.*, ¶257.

22. *Ibid.*, ¶351.

23. *The Differend*, 209.

24. *Heidegger and "the jews"*, section 4.

25. *The Differend*, ¶183.

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