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THE CONFLICT OF PRESENTATIONS,
A CRITIQUE OF JEAN-FRANÇOIS LYOTARD'S
PHILOSOPHY OF DIFFERENDS

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Summary

The subject of this thesis is Jean-François Lyotard's book Le différend, written in 1983 and translated into English in 1989. Lyotard (b. 1925) is an important French philosopher whose best known book in Anglo-saxon countries is The Postmodern condition (La Condition postmoderne) written in 1979.

However, by his own account, Le différend is Lyotard's most philosophical book, "Mon livre de philosophie". This fact is of particular relevance because his importance, in France, stems from Lyotard's work in political commentary and art criticism as much as from his specifically philosophical works (starting with his earliest book La Phénoménologie).

My thesis concentrates on this philosophical aspect of his work and I have, therefore, chosen to specialise in the philosophy put forth in Le différend.

The aim of my thesis is to criticize the various modes of presentation used by Lyotard to define the central concept of his book: the différend. The most important presentations are the legal presentation, the presentation in a philosophy of language and the presentation in an ontology, but I have also considered the affectual background to his interest in différends together with his treatment of the term through theories based on the feeling of the sublime.

The three main definitions of the différend can be summarized as an irresolvable legal conflict, a conflict involving incommensurable genres of discourse and an absolute contingency between that which occurs and our interpretations of occurrence. Philosophically, the interest in the term derives from this irresolvable, incommensurable or contingent aspect within différends insofar as this opposes general and universal norms.

The purpose of this thesis is to investigate this aspect with particular reference to the differentiated modes of presentation.

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Bibliographical notice

In this thesis, all translations of texts originally in French are mine. For this reason I have included the French original in my notes wherever a translation is used in the text. At times this procedure makes the notes cumbersome and therefore, I have left the full bibliographical details of texts quoted in the notes to the bibliography at the end of this thesis.

Chapter I - Introduction

And it was as if the two of us had been living in parallel passageways or tunnels, never knowing that we were moving side by side, like souls in like times, finally to meet at the end of those passageways [...] ¹.

In Ernesto Sábato's The tunnel the narrator, Juan Pablo Castel, recounts his murder of María Iribarne. Castel traces the crime retrospectively, and begins his narration with the supposed end of any murder tale, with María's death: "It should be sufficient to say that I am Juan Pablo Castel, the painter who killed María Iribarne". Thus, like Márquez's Chronicle of death foretold, The tunnel leads the reader to a pre-ordained conclusion. As surely as a tunnel must have an issue, Castel's story will result in the in the murder of his lover: "Sobbing, I drove the knife into her breast. Her jaw tightened and her eyelids closed". There is, therefore, no suspense in Sábato's novel, its outcome is divulged from the start, and it is not a desire to find out the end of the book that drives the reader to pursue Castel's account. What then is the motivation for following The tunnel to its issue?

The answer to this question can be found in a second relation of the words "issue" and "tunnel". If María's death is the issue, outcome or end of the novel, it is not its purpose, motor or sense; beyond the issue of a tunnel lies the outside, and the goal of any crossing is to reach the latter rather than the former. In Sabato's novel, the issue is not the crime but is instead the plot leading inexorably from Castel's isolation, in a tunnel of impassionate and rational loneliness, to an outside world, represented by María, where his life can be given a purpose, meaning and passion. The reader's motivation is driven by the twists of the plot:

Everyone knows that I killed María Iribarne Hunter. But no one knows how I met her, exactly what our relationship was, or why I came to believe I had to kill her. I will try to recount all this objectively ².

Sábato portrays Castel as an absurdly rational man desperately seeking an outlet from the barren isolation of his rationality, first in his obsession for María, and then in his account of the murder: "I am animated by the faint hope that someone will understand me - even if it is one person" - "There was one person who could have understood me. But she was the very person I killed". The quest is represented through the trope of the tunnel; Castel's

enclosed loneliness can be given in conjunction with the forlorn hope of relief at the tunnel's end, where the two lovers meet: "the passageways finally had joined and the hour for our meeting had come". So, when the novel comes to a close, an issue has been blocked, and, an issue has been broached: an end and a beginning. The end is Maria's death; the beginning is in the realisation of the twisted necessity of Castel's isolation:

[...], and that after all there was only one tunnel, dark and solitary: mine, the tunnel in which I had spent my childhood, my youth, my entire life ³.

For sense to be made of Castel's obsession for Maria, and for lessons to be learnt due to the outcome of that obsession, Maria must be pursued and die. However, that death is only one of the issues of The tunnel, it is neither its sole end, nor its sole preoccupation. Instead, Sabato's purpose is, to take an example from many ⁴, to reflect upon the excesses of reason in Castel's isolated personality; these excesses lead, on contact with an external world, to the annihilation of his sole hope of salvation: "There was one person who could have understood me". Throughout the novel, Castel exercises and attempts to liberate a rigorous and absolutist reason. Once set free, this extreme rationality gives rise to an overpowering

jealousy, the will to be the absolute and unique possessor of María; and, in a fit of logical reasoning bordering on fantasy, Castel deduces María's unfaithfulness and kills her. This killing brings out the issue of the self-obsession and inadequacy of reason in the world outside rationality. After the murder, Castel rushes to María's house and announces to María's blind husband, Allende, that he has put an end to her deceit: "I deceived you and she deceived us both. But now she can't deceive anyone". Allende attacks Castel and repeatedly utters a single word: "fool". Later, locked in his cell, Castel slowly realizes the significance of this word:

In these months I have been locked up. I have tried many times to think the blind man's last word, that word fool. An infinite weariness, or maybe some obscure instinct, always prevents me. Someday I may be able to do it, and at that time I will also analyse the reasons for Allende's suicide⁵.

Thus, the outcome of Sábato's novel, María's death, is the catalyst for the playing out of its central issues. I have shown how the issue of the isolation and obsessiveness of reason, as well as the danger of its application to the world outside rational bounds, is brought to the fore as the plot of The tunnel unfolds. This effect of unlocking

and then focusing the main issues of a text through an end, a final point, is also the most efficient strategy for drawing out what is best in Lyotard's book Le différend. Lyotard's philosophy lends itself to this strategy because, like Sabáto's novel, it focuses a series of political, affectual, legal and philosophical problems around a single unifying concept, the concept of a différend - temporarily defined, here, as a social, legal, political, ontological and linguistic difference or conflict that can neither be measured nor resolved. Therefore, although Lyotard appears to set a particular end to his philosophical enterprise, that is, to give an adequate definition and firm philosophical foundation to the concept of a différend, in fact his book tackles a set of current philosophical problems (such as the possibility of philosophy after Auschwitz, and the role of philosophy in a postmodern capitalist society) as well as a set of recurrent, but equally pressing problems from the history of philosophy (such as the possibility of just judgement, and the role of ontology as the foundation for philosophical judgement). To understand the power and value of Lyotard's treatment of these issues, it is essential to study them in the light of the concept of the différend and, similarly, the différend must be understood in terms of the affectual, legal, political and philosophical problems the concept is set to highlight and overcome.

The challenge taken up in this thesis is to understand Lyotard's treatment of current and recurrent philosophical problems while also taking account of the single unifying trait of Le différend: the grounding and definition of a philosophical concept of irreducible and originary difference, the difference at the basis of irresolvable legal, political and social conflicts as well as the linguistic and ontological differences between sense and reference, events and representation of events. In order to do justice to Lyotard's philosophy, this challenge must be met. To consider Lyotard's work on these difficult issues without referring to his intricate philosophy of différends, would be to lose the impact and universal validity of his analyses, thereby reducing them to a set of observations (this has happened in particular to Lyotard's work on the postmodern). Equally, to study his philosophical definition and grounding of the différend without taking recourse to the issues the concept is set to account for, would be to miss the all-important point that the différend only makes sense if it is taken in the context of the major issues giving rise to the elaboration of a theory of irreducible difference (to ignore this, leads interpreters to accuse Lyotard of theoretical mistakes such as performative contradictions). Thus, in the same way as María's death in The tunnel only makes sense in the context of the general issues raised by Sábato, the definition of the différend cannot be understood without

reference to the issues addressed by Lyotard. This reference will ensure that the necessary association of the theory of différends with the philosophical problems at the basis of Lyotard's project in Le différend is not lost when the theory is analysed.

How though can a thesis develop a theoretical analysis of the philosophy of différends while at the same time studying the issues raised and resolved through the application of that philosophy? It is usual, in criticism, for one of these moments to precede the other; either, the theory is analysed and criticized prior to a criticism of its application; or, the application of a theory is shown to fail and hence the faultiness of the theory is deduced. Unfortunately, the selection of one or the other of these methods will not suit a study of Le différend, because only an understanding of the intertwining of theory and practice in Lyotard's work can lead to a correct criticism of the philosophy of différends. Furthermore, the above question, the guiding question behind the strategy of my analysis of Lyotard's philosophy, is all the harder to answer given his positive reaction to the same problem in the development of his own work. Indeed, if the issues associated with the theory of différends are to be seen as an intrinsic aspect of that theory, then the style in which Le différend is written must take account of this dependency. Lyotard is aware of this problem, and he attempts to surmount it

through a very particular style. Le différend is written as a series of numbered notes and notices where examples, historical philosophical studies, contemporary issues and the definition and defence of theoretical terms are mixed, juxtaposed and yet differentiated through a complex system of cross-references and didactic classifications (sections and topics). The critic must unravel and reconstitute the various issues and theories of Le différend, so the philosophy of différends can be understood; and yet, subsequently, that philosophy must be considered in conjunction with the issues from which it has been artificially separated.

The goal of this thesis is to do justice to Lyotard's conjunction of philosophical issues and philosophical ends, but without surrendering the duty of the thesis to criticize a philosophy at its most profound foundations, that is, where the central and novel theoretical terms of Le différend are defined and grounded. To fulfil this task I have devised a main thesis that takes account of the issues involved in the definition of the différend; these take the form of the various presentations of the term in Lyotard's book. There is a legal presentation coinciding with the issues of the possibility of just judgement and the necessary inequity of a law based upon cognitive criteria for the establishment of evidence. There is an affectual presentation that corresponds to Lyotard's

concerns and feelings about the possibility of philosophy after Auschwitz, of philosophy in a postmodern capitalist society, of a philosophy free of the will to sublimate difference through speculative reason. Further, there are two more traditionally philosophical presentations, the one devising a philosophy of language capable of taking account of originary and untranslatable differences, the other seeking to find the ground of those differences in an ontology that draws an absolute distinction between events and representations of events, or between occurrences and concatenations of occurrences (the significance of the term "occurrence" is explained in chapters IV and V of this thesis). And finally, there is a presentation expressing the role of feelings, strong sentiments, in the recognition of difference, conflict and incommensurability: the presentation of the recognition of différends through the feeling of the sublime.

However, it is not enough just to study the various presentations of the différend in Lyotard's book. Although such an endeavour involves a critical dimension, insofar as each presentation must be separated from the others and must then be reconstituted and completed to make a consistent legal theory, philosophy of language, theory of the sublime, or ontology (thereby leading to the possibility of criticisms specific to each presentation once it is considered as autonomous), this work of recovery

omits criticism and analysis of the union of these presentations under the single concept of the différend; without this analysis the complex interaction of philosophical issues and philosophical ends, practice and theory, in Le différend cannot be understood. For this reason, I have subsumed the different presentations of the différend under one main conjecture - the central and guiding thesis of this thesis - where the conjunction of the presentations is criticised and where the need for such a conjunction is demonstrated. The hypothesis is: The different presentations of the concept of the différend in Lyotard's philosophy are inter-dependent, the logic of the arguments in each one depends on points made in another, and yet, where one presentation is grounded in a second these two contradict each other.

In this thesis, I will show how each presentation of Lyotard's main theoretical term, the différend, involves claims that must be defended in a further theory or presentation. I will also demonstrate how, once these presentations are taken as logically connected, contradictions and inconsistencies appear that cannot be resolved from within Lyotard's philosophy. For example, I will show how Lyotard's definition of différends as irresolvable legal conflicts necessitates a further argument presenting différends as linguistic events in order to support his claim as to the irresolvable nature of

legal différends. Thus, the legal presentation depends upon the presentation in the philosophy of language. However, I will then show how those presentations contradict one another over the different categories of judgement they take into consideration, namely, the legal category of the judgement of tribunals and the linguistic category of cognitive sentences. Each of the next chapters of the thesis corresponds to a particular presentation of the différend; these chapters are linked according to my main hypothesis.

Chapters follow one another as the presentation from the first is completed - and then contradicted - by the presentation from the second. The respective chapters and contents are the following:

- Chapter II : The affectual background to Lyotard's concept of a différend;
- Chapter III: The legal presentation of the différend;
- Chapter IV : The différend and Lyotard's philosophy of language;
- Chapter V : The ontological ground to the concept of the différend;
- Chapter VI : The recognition of différends and Lyotard's use of theories of the sublime;

Chapter VII: Conclusion.

Chapter II - The affectual context to Le différend

Introduction

The purpose of this chapter is to introduce the concept of a différend in the context of Lyotard's writing after La condition postmoderne⁶. To introduce this theme two approaches are possible. One could, as Lyotard does in his autobiographical book Pérégrinations, consider the concept of a différend within the wider topic of a resistance to universal norms, through an affirmation of heterogenous language games, ideas, thoughts, cultures, academic subjects and faculties. Or one could, as I believe the book Le différend attempts to do, formulate the concept of a différend within a specific philosophy as an active theoretical term.

In this chapter, and the next, I intend to develop the concept of a différend through the second approach mentioned above. Indeed - it is the goal of this thesis to study the notions of justice and judgement as they are treated by Lyotard in a philosophy of language. A différend will be defined, explained and understood as a theoretical term within a philosophy of language wherein it fulfills a

specific and essential role. The philosophy in question is Lyotard's philosophy of sentences, régimes of sentences and linguistic genres. The role played by the term différend is that of referring to the locus of heterogeneity between names and objects, sentences, régimes and genres. The meaning of 'locus of heterogeneity' will be clarified as this chapter unfolds; however, as a working idea it is here temporarily defined as the disputed point between two or more conflicting parties involved in a dispute that cannot be equitably resolved - that is, in fairness to all parties. Also, it is essential to note that an equitable solution is not a solution to which all the parties give their assent. Rather, the term equitable implies that in the resolution of the conflict nothing essential to any of the factions in dispute is lost or bargained away (as it could be in assenting to a pact, for example). Those things termed as essential to a faction are the characteristics that define it as a particular party with a specific grievance within the dispute. Note, therefore, that my definition of a locus of heterogeneity does not necessarily correspond to the disputed territory, but instead, is to do with the nature of the claims made on the subject of that territory⁷. This second clause is important for the understanding of loci of heterogeneity as they occur between sentences or genres of discourse.

So, although these chapters concentrate on the theoretical, rather than on the historical context of the concept of a différend, I will additionally take account of the term's roots in Lyotard's history of resistance to universal norms in philosophy. A short summary of the many varied forms that resistance has taken will be given, in order to situate différends within the series of similar terms Lyotard has used to bring our attention to, and defend what he sees as heterogenous entities: language games, microlanguages, narratives, "pagan tribes", etc, etc... And therein lies the purpose of this introductory chapter: the concept of a différend, as theoretical entity, will be returned to its historical roots in Lyotard's work in preparation for a consideration of the legal terminology and logic⁸ used by him in the definition of a différend as a theoretical linguistic term. This use of legal analogies in a philosophy of language will be investigated because it is an anomaly in a philosophy that seeks a specifically linguistic foundation (this point is demonstrated as true for Le différend in chapter IV of this thesis).

The study of the role of legal analogies, together with their links in Lyotard's work prior to Le différend and independent of a philosophy of language, will be effectuated through an analysis of Jacques Derrida's and Jean-Luc Nancy's work in criticising Lyotard's later

philosophy. This analysis is of particular interest given their common concern with Kant's Critiques - Derrida and Nancy criticise Lyotard through their work on Kant⁹, this will give me a platform from which to discuss Lyotard's relationship to Kant, itself an important aspect of his work in Le différend¹⁰ (I will investigate this connection in chapter V of this thesis where Kantian faculties and Lyotard's régimes and genres are compared).

Of course, the question arises of why I choose to approach différends from a theoretical standpoint from within Lyotard's philosophy of language. The answer to that question is three-fold; it takes account of what I see as the three main critical responses to Lyotard's later work, which in turn define and then defend or attack the main points they take from that work. The three points in question correspond to these three critical responses:

- 1) Lyotard's work is primarily political, and must be judged in terms of its socio-political import¹¹.
- 2) Lyotard gives us a social critique of the relationship between philosophy and a society that he defines as postmodern; he must be judged in terms of the accuracy of his critique¹².

3) Lyotard is a philosopher attempting to re-think Kantian critique in a way that does not lead to the possibility of universal norms; he must be judged, philosophically, within the Kantian foundational critical tradition¹³.

Although the differences between these three responses are probably conditioned by factors such as which one of Lyotard's books the proponents of each view concentrates upon. Such considerations are not helpful to my analysis of Le différend as presenting a singular philosophy all of its own. I will, therefore, study the three approaches given above from the point of view of their specific relevance to readings of that book alone.

The first and second critical responses condition my study of the concept of a différend through the political debates, within the realm of philosophy, that follow on from their criticism of Lyotard's work. The first reading leads to a debate upon the critical potential of a philosophy based on différends rather than on notions of community, common sense (taken as a sensus communis as in § 40 of Kant's third Critique) and shared rationality (as suggested by Jacques Bouveresse in Rationalité et cynisme or Alain Renault and Luc Ferry in La pensée 68). The second reading leads to the "so-called 'postmodernism debate'"¹⁴ on the nature of 'our' (the present) society and the aims

and aspirations a modern philosophy can still hold to in such a society. It seems to me that neither of those debates can be satisfactorily resolved in the practical sphere; that is, further analyses of the modern, postmodern political and social conditions will not offer a definitive or even a correct interpretation of the crisis facing philosophy in its relation to practical society in the late twentieth century (clearly, the detection of a crisis is intrinsic to the debates at hand). Therefore, I analyse Lyotard's work in its theoretical guise as a philosophy of language that enables a consequent social and political critique. This avoids furthering two debates in a manner that can only fuel the differences that lead to them, but never allows a solution to be reached ¹⁵.

I do not deny that practical concerns are important for Lyotard's philosophy and the understanding thereof. Much of these two chapters is concerned with the affectual and practical concerns given in Le différend. However, those concerns must be analysed as an intrinsic part of the philosophy of language for their full import to be realised.

To reverse that analysis, to commence a study of Le différend by a debate upon its practical work and applications, prejudges the analysis of its theoretical import and misconstrues the status of practice in Lyotard's

book. It is this point that my thesis will defend prior to criticising the relation of practice to theory in Le différend.

The third critical appraisal I take account of stems mainly from the work around the series of papers given at the Colloque de Cerisy¹⁶ by Jacques Derrida, Jean-Luc Nancy, Philippe Lacoue-Labarthe and Jean-François Lyotard. Many of these colloquia, in particular those from 1980 to 1982, centred upon the work of Immanuel Kant with particular reference to current philosophical attempts to re-think his work. In chapter III, I analyse Jacques Derrida and Jean-Luc Nancy's work on Kant with particular reference to the concept of a différend (I will do the same in chapter VI with respect to Lyotard's use of the idea of the sublime).

My reading of Derrida's and Nancy's work takes account of the following criticism I level against their studies of Lyotard's philosophy. Derrida and Nancy give a critique of the philosophy of language in Le différend through the medium of a critique of that work's relationship to Kantian critique. The flaw in such an approach is its limited ability to criticise and appreciate Lyotard's philosophy of language as a specifically linguistic form of critique. Through that weakness, Derrida and Nancy are liable to miss Lyotard's linguistic solutions to problems in Kantian

critique; they may, therefore, make criticisms of Lyotard that will prove, on closer inspection, to be invalid. Hence, I will further their analysis in a study of the specifically linguistic critique in Le différend independent of the criticisms directly related to comparisons with Kantian critique.

Thus, the structure of the next two chapters is the following. In the first chapter (II), I will situate the concept of a différend within the bibliographical and philosophical context of Lyotard's work as a whole, with an in-depth treatment of the key examples used in Le différend: the analysis of Auschwitz and the Vernichtung, and the study of the effects of capital exchange on philosophical, intellectual thought. In chapter III, I will work through Lyotard's use of legal analogy - including the question of whether it is an analogical use - with reference to Derrida's and Nancy's work on Kant and Lyotard. Only after these introductory chapters will it be possible, in chapter IV, to analyse the concept of a différend as a theoretical term in a philosophy of language. It is important to realise that in the next two chapters I only introduce, that is define, the concept of a différend and then only in extra-linguistic terms. The in-depth analysis and criticism of the possibility and validity of a linguistic definition is tackled later, in chapter IV.

Le différend in the context of its predetermining concerns

When Lyotard's work is considered as a whole, as an oeuvre with themes particular to it, the multitude of topics covered in a variety of literary and philosophical styles makes the collection of his papers, novels and philosophy books into common themes and trends an impossible task. Even if one sets apart his essays on art, such as Que peindre?¹⁷ and L'assassinat de l'expérience par la peinture, Monory¹⁸, and his novels, such as Le mur du Pacifique¹⁹ and Instructions paiennes²⁰, to concentrate on his philosophical and theoretical work, Lyotard's oeuvre still appears as a set of disparate works with little in common. Indeed, this diversity is perhaps the commanding trait in his work.

Lyotard's philosophical oeuvre consists of a series of central, thematic books around which are organised groups of essays which mark the preparatory and conclusive phases of the creation of the principal books. The central books share nothing either in their style of writing, or their chosen topic, or their theoretical constructions. La phénoménologie, Discours, figure, L'économie libidinale and Le différend are written in completely different philosophical contexts varying from an academic study of phenomenology, to a theoretical study of the figural in discourse, to an aesthetic presentation of a metaphysics of

the libido, to the construction of a philosophy of language. Adding to this list, I must mention the one Lyotardian project not collated around a central book: his work for the "Socialisme ou Barbarie" and "Pouvoir ouvrier" groups from 1954 to 1966; that work is chronicled in his essay "Pierre Souyri": Le marxisme qui n'a pas fini" ²¹.

It seems that the attempt to centrally thematise Lyotard's work falls foul of the diversity in his oeuvre. However, if we cannot determine a common topic or style to Lyotard's works it may be possible to classify them in terms of a common motivation; that is, find a set of common concerns that conditions the production of all Lyotard's core books - for example, a belief in justice or a will to think through the implications of Marxist theory. Instead of enquiring about philosophical goals, what sort of philosophy Lyotard seeks to create - be that a metaphysics of the libido or a philosophy of language - I will investigate the motives at the base of the establishment of any, or all of the philosophical theories investigated throughout Lyotard's oeuvre. It is through such extra-philosophical (more accurately: pre-philosophical) motives and interests that Lyotard recapitulates his own life-work in his philosophical-autobiographical book Peregrinations. In the book each of his core philosophical theories and his work "Socialisme ou barbarie" and "Pouvoir ouvrier" is situated within a context of intellectual and affectual

motives, a "pilgrim's way" that charts disparate essays in theorising and expressing sets of original thoughts and feelings. This is how he situates Le différend:

Le différend (1983) tries to give an ontological and linguistic (or, better yet, "sentential", "phrasic") status to what Arakawa calls the "blank", connecting in this way with my notion of "blank skin" in Le mur du Pacifique (1979). It's the emptiness, the nothingness in which the universe presented by a phrase is exposed and which explodes at the moment the phrase occurs and then disappears with it ²².

The intellectual and affectual background to Le différend is hence seen by Lyotard as expressed in his novel Le mur du Pacifique. Where he considers the heterogeneity covered up at the base of Western civilisations which coincides with the heterogeneity presented by their opposite, the "savage" cultures they try to exclude so violently - for example, in the exclusion of black culture as barbaric and threatening. Lyotard's point is that real violence occurs as the administrators of the white Western savage state attempt to achieve a monopoly on the exploitation of the power generated by the "blank skin" - the symbol for original heterogeneity - through the exclusion of administrators from other cultures they brand

as "savage". Nazi concentration camps are seen as the culmination of that violence. The Nazis exploited the difference between Jews and Gentiles to generate a power all of their own.

Lyotard does not only view his own work within the context of extraneous intellectual and affectual concerns, he also uses such analyses to study the philosophy of other thinkers. For example, Lyotard's article "Wittgenstein, après" puts Wittgenstein's philosophy in the context of his solitariness and his concern for the times he lived in: "Wittgenstein is a solitary thinker", "He is not solitary because of an ignorance of the world of his times, but rather, because he does not ignore them" ²³.

In this chapter I will use this approach of Lyotard's in an analysis of his own work in Le différend. I will try to uncover the thoughts and feelings at the basis of his philosophy of language. Then, I will demonstrate that these thoughts have deep roots within Lyotard's texts. They are thoughts that recur as dominant themes in his oeuvre. However, while setting Le différend in an affectual, intellectual context, I do not assume that the context is not theorised and inscribed in the philosophy it motivates. On the contrary, the motives for Le différend do not stand 'outside' the philosophy of sentences they promote. I must

therefore show that initial thoughts and feelings later become theoretical terms in the philosophy.

There are great difficulties involved in my plan to measure the importance of concerns claimed to be behind a text's conception. As shown by Hans-Georg Gadamer in Truth and method²⁴, the privileging of the reference to authorial intentions in the interpretation of a text is not the most valid reading of that text. Intentions and motives are separate from the text itself and cannot be considered as directly related to that text's meaning or implications. I concur with Gadamer and will therefore not demonstrate that the context I select for Le différend is in any way close to Lyotard's intentions with regard to meaning and import of his book. Despite this limitation, I do wish to retain a sense of a deep-rooted context to Le différend. And, in order to retain that sense of a longstanding and important (in Lyotard's work) basis for the book, I will isolate certain concerns of a very early Lyotard essay and highlight how they are retained and duplicated in Le différend. This method does not demonstrate that the topics chosen by me are close to Lyotard's intentions. It does show that they are lasting topics in his work and that, insofar as both texts treat them as central points in their argument, they are important topics in Lyotard's work spanning a long period of his life. Furthermore, although my method serves to isolate given aspects of Le différend,

the demonstration of the importance of those points to the philosophy of sentences must be philosophical rather than textual; that is, I must show how the terms I highlight actually play an active, essential part in the construction or logic of Lyotard's philosophy - as goals, as analogies, as paradigms, as models, etc.. etc.

In 1948, the French review "Les Temps Modernes", run by Jean-Paul Sartre, commissioned three promising students to give their impressions of life and thought in the post-war era from the point of view of those born between the two wars. Or, to be more precise, of those born in 1925. Jean-François Lyotard, born in 1925, was one of the selected students and his contribution appears with two others under the shared title of "Nés en 1925". Thus, the essay in "Temps Modernes" pre-dates Le différend by thirty-five years. Yet, I claim that many of the points Lyotard expressed in 1948 remain central concerns in the far later work and, in effect, they condition the goals that direct the writing of the book.

Lyotard's essay is remarkable and very different from the other two essays in "Nés en 1925" due to its perception of the holocaust as standing at the end of the Western liberal tradition of speculative discourse. Lyotard claims that in the light of this self-destruction of speculative, trade orientated liberalism, Western will has to be

dispersed into a set of different, irreconcilable political positions to be taken up vis-à-vis an immovable matter in the form of nature or of a Western historical destiny. This is how he ends the essay: "In short, we are in dispersal; with a common trait, the withdrawal of the speculative and a concern for the concrete, in particular the political" ²⁵. I want to claim that the motivational basis for Lyotard's philosophy of language in Le différend is conditioned by his early perception of the end of the speculative liberal tradition in the death camps and by his conclusion that all that can follow such an end is a politics of dispersal limited by materialist constraints and a destiny that also generate the individual elements of that politics.

In order to note the presence of Lyotard's argument from "Nés en 1925" in Le différend, I divide the argument into four distinct points. In this section of this chapter I will only introduce those points as elements of the work in Le différend. Any discussion of the validity of expressing and proving the disparate thoughts put in the early essay through a philosophy of language, will take place in later chapters.

The four points I wish to emphasize in "Nés en 1925" are the following:

- 1) The concentration camps mark the point at which European speculative liberalism destroyed itself; the camps were a certain destiny of speculative thought and that fact must overshadow and condition all subsequent thought.
- 2) Nazism emerged from a failed and seized up capitalist system and was encouraged in its destruction of liberal tradition by the development of mechanical technology, which therein found its true destiny.
- 3) Any totalising speculative thought is threatened by a similar destruction unless it takes account of its own propensity for horror - that is, becomes dispersed non-totalising thought.
- 4) Materialist constraints and destiny are the limits of all thought; events precede and pre-determine, or annul, speculative thought, including the revolutionary thought of humanist enlightenment.

The first point expresses Lyotard's main reason for a suspicion of speculative reason: the holocaust or shoah. In "Nés en 1925" Lyotard does not present this point as following from a deduction; rather, he merely states that the shadow of the camps is thrown over the philosophies and political traditions whose forerunners led into, or even

bred nazism. For Lyotard, the camps must always haunt any return to pre-war speculative reason and the belief in liberal progress dependent upon that philosophy:

Given values are engaged in the fight and, especially, engaged in a self-justification of their involvement. From this comes their rapid wearing down. We will come out of war, the XXth century's most concrete product, with a monstrous poverty of thought and morals. We are 20 years old when the camps vomit that which they have neither the time nor appetite to digest. Those hollow faces plague our thinking: in the camps, Europe has assassinated its liberalism, three or four centuries of Greco-Latin tradition ²⁶.

Thus, there are two aspects to Lyotard's reaction to the concentration camps that distinguish his feelings from those of other post-war thinkers (notably the two other contributors to "Nés en 1925"). Firstly, Lyotard shows an absolute pessimism when faced by the horrors of the second world war, he does not advocate a sense of a lesson to be learnt or of a measure never again to be reached. For Lyotard, the camps are the fate or destiny of European philosophical and political traditions. Secondly, Lyotard sees the values that were opposed to nazism as being sullied like those values implicated in nazism - take, for

example, his use of "Europe" instead of particular countries in the quote above. After the war, thinkers are left bereft of philosophical values, "dans une indigence monstrueuse", and overwhelmed by the horrors of war and persecution, "ces visages creusés harcèlent notre réflexion".

The concentration camps, as ground for an opposition to liberal speculative discourse and reason, are as essential to Le différend as they are to "Nés en 1925". Différends can be understood as insurmountable hurdles for speculative reason, where two opposite views meet yet cannot be reconciled into a mutual agreement²⁷. The camps are thereby associated to a différend, the différend between Jews and Nazis, that becomes the paradigmatic différend in Lyotard's book. It is from a discussion of this paradigm that he considers the failure of the speculative move to sublimate différends and the objective move to reduce a différend to an objective evidential analysis of a disagreement. However, in Le différend, the camps are thought within a general philosophy of language; therefore, the set of phenomena known as 'the concentration camps' is represented by one linguistic unit, a name or rigid designator (see chapter IV) that refers to the set and allows discussion of that set without showing all its constituents each time it is mentioned. For this referential purpose, Lyotard selects the name Auschwitz, a

name he first uses in the preparatory essay to Le différend, "Discussions, ou: phraser "après Auschwitz". Auschwitz, the name, fulfills the same function of forbidding a speculative discussion as does the image of hollowed-out faces in "Nés en 1925":

A name [Auschwitz] that designates that which has no name in speculation, an anonymous name. And, for speculation, the name of the anonymous ²⁸.

There are two difficulties involved in Lyotard's use of the name Auschwitz ²⁹ as a designator of the horror of the camps; firstly, can Lyotard define names as rigid designators of a set of events and, at the same time, retain the emotional anguish those events cause? Secondly, if Lyotard's argument against speculative reason is dependent upon a singular event, then how can he extrapolate the consequences of that event into a generalised refutation of speculative reason through a definition of différends in a philosophy of language? These questions are at the basis of an objection I have against Le différend and "Discussions, ou: Phraser "après Auschwitz". Lyotard confuses a philosophy of language and an emotional argument based on his own subjective reactions to the camps as testified by "Nés en 1925". This objection is pursued in this thesis in two ways. I investigate the possibility of a reading of Lyotard's philosophy of

language as a refutation of speculative reason independent of the Auschwitz paradigm (see chapter IV). I also question Lyotard's dependence on that paradigm for his definition of différends (in chapter III). Beyond these two analyses I will, in chapter VI, consider Lyotard's own solution to the problem I have raised; that solution involves a subtle use of Kant's concept of the sublime. My work in chapters III and IV is necessary, despite the theory of the sublime presented later, because the theory is dependent on the theories of the différend and language that precede it; those theories may themselves fall foul of my objection concerning the common use of a philosophy of language and subjective emotions.

For now, in this chapter, I will continue the analysis of the context of Le différend and keep my objections in the background. So far, what must be retained from my analysis is the importance of the concentration camps for both Lyotard's affectual thinking (as in "Nés en 1925") and his philosophical thinking (as in Le différend):

Names from "our history" provide counter-examples to their [the philosophers of our history] claim.- All that is real is rational, all that is rational is real: "Auschwitz" disproves the speculative doctrine. At least this real crime is not rational. [My emphasis] 30

The second point that can be taken from "Nés en 1925" and found in Le différend is Lyotard's concern that capitalism allied to techno-science contains the seed of Nazi atrocity. A civilisation built on the idea of progress through a liberal capitalist exploitation of technological and scientific advances can run itself out and disintegrate into a horror that is not wholly independent of the credo of that civilisation:

In 1918, Germany alone grasped the meaning of the chaos in which it had fallen; and nazism, capitalism become rigid, arose from a horror of that chaos [...]. There was despair at the basis of those totalitarian systems. It was in Germany that the mechanical tradition came to fruition; the camps signify whereto the exploitation of man can lead once it loses patience. In the XIXth and early XXth centuries liberal exchange and speculation were associated to a position that led to a merger of man into economy. Our generation has lived through the gradual undermining or catastrophic explosion of both ³¹.

In the work preparing for Le différend there is a similar sense of the power of the combination of liberal capitalism and techno-science. Once again, that power is seen as teetering on the edge of violent repression. La

condition post-moderne and Au Juste both explain - although to different ends - how capitalism aided by techno-science can exploit the different and varied aspects of post-modern society, a society no longer based on the totalising narratives that upheld those modern societies embroiled in Nazism and other horrors. However much society may have changed, former threats remain; both books allude to the terror involved in the articulation of different, disparate language games into one economic structure:

Terror is the major problem (not war, as Kant once thought); the fact that the social organisation - understood as a multiplicity of very different language games with individual pragmatic rules and ways of assigning people to precise positions and roles - is shot through with terror, that is, the fear of death [...] "death" in all its forms: sectioning [internment], unemployment, repression, famine, [...] 32.

If this idea of Lyotard's is not developed, it is easy to criticize its inclusion in the philosophy of language given by Le différend. Either, Lyotard's claims concerning capitalism and techno-science must remain just feelings or sentimental impressions; or, they must be defended through an analysis of capitalism that demonstrates an empirical

link to terror and repressive violence. Neither of these options would be valid in a philosophy of language seeking to demonstrate, with the aid of those points, that capitalism necessarily sublates différends into a totalising economic system. In effect, though, that is the avowed goal of Le différend and Lyotard must therefore seek to prove it by other means:

The capitalist tribunal judges negligible all différends between phrase regimens and between genres of discourse. Through its necessary mode of concatenation from one sentence to another the economic genre brushes aside occurrence, events, the marvellous, any expectation of a community based on affects³³.

In his essay "Judicieux dans le différend" Lyotard expresses his feelings concerning capitalism within the terminology of his philosophy of language, thereby avoiding a dependence on affects for the proof of his analysis of the "economic genre". The emotive expression "capitalism" is replaced by the linguistic genre of "Capital" (or "genre économique"); a genre that includes regimens of sentences, such as cognitive sentences and prescriptive sentences, in an economy that evaluates their claims to power and precedence in terms of their performance or performativity according to a rule of "least time taken to accomplish a

given task". All sentence types are judged and linked together following rules governed by the measure of money.

Thus, if there is a différend, a conflict, say between workers and bosses, that différend is solved by determining which of the cases they present is the most financially remunerative: "capital seeks one language and one organisation under the indifference of money". Lyotard has transformed his feelings concerning capitalism into a terminology that allows his philosophy of language to articulate them and prove their universal validity:

The purposiveness of capital does not lack control over occurring sentences, it imposes a control of profitability, a subordination to the stake of all stakes (or so it seems): to "win", to gain time, as measured through interest calculated as money ³⁴.

Even if we take into account Lyotard's translation of his suspicion of capitalism into the analysis of the genre of "capital" in his philosophy of language, there are still great difficulties involved in his theses concerning the link between capitalism and terror. Although Lyotard offers a term, "capital", to represent his feelings about the threat of a capitalist hegemony, he only offers a short analysis of that new term in the context of the philosophy

of language. In Le différend, there is no prolonged analysis of "capital", only a series of remarks on the notion of "gained time" as measure of the pecuniary performativity of various régimes of sentences from a Marxist point of view. His claims concerning capitalism remain unproven and dependent on arguments based on affects even in the book that determines this term from a theoretical point of view. Thus, when Lyotard's remarks from "Nés en 1925" reappear in Le différend³⁵, their status has not changed and they are not part of a consistently defended argument. Therefore, the use of the genre of "capital", as a warning of how ignoring différends can lead to a dangerous hegemony, can only be exemplary - in the same way as "Auschwitz" is paradigmatic. Lyotard cannot make a statutory use of his example; the study of the economic genre of capital cannot form the basis for laws and rules within his philosophy of language.

As is the case in his use of the paradigm Auschwitz, Lyotard's use of the example of "Capital" must remain peripheral to the theory of his philosophy of language in Le différend. This is because Lyotard's analyses of Auschwitz and "capital" draw conclusions that cannot be shown through a linguistic analysis. All that Lyotard's philosophy of language can ensure is that his interpretations of the phenomena of Auschwitz and "capital" are possible within the constraints of a philosophy of

language constructed around the concept of a différend. Therefore, if the paradigms and examples used in Le différend play a constitutive rather than peripheral role in the philosophy that guarantees their possibility, then Lyotard's argument will be circular and he will not be able to claim to have justified his theories independent of his own feelings concerning the holocaust and the rise of late capitalism. He must distinguish the philosophy of language in Le différend from the examples he uses to accompany that philosophy, examples drawn from his own particular subjective impressions. In Le différend, Lyotard attempts to ground différends as irresolvable conflicts in a philosophy of language. To do this he uses a linguistic analysis to ensure the necessary possibility of heterogenous linguistic sets (see chapter IV); this analysis cannot depend upon particular events if it is to be able to draw universal conclusions. If Lyotard does not separate his philosophy from the subjective impressions making up the background to his work, then his philosophy can only be conjectural and cannot make universal claims.

The point I have made above also holds true for the third subjective impressions I recorded in "Nés en 1925" and observed as present in Le différend. Point three is the thesis that speculative thought, as present in Lyotard's impressions on capitalism, must necessarily lead to violent repression. Lyotard here encounters the same objection as

raised against point two: his thesis is not substantiated through a demonstration of its validity but is instead set down as an affectual evidence - note that this remark is only applicable to the step into practical violence and not to Lyotard's theory concerning the linguistic status of speculative thought as necessarily totalising. Point four, which testifies as to Lyotard's belief that matter or destiny must limit the speculative scope of reason, is likewise limited to an affectual proof in "Nés en 1925" but not in Le différend.

In Le différend, the limiting potential of matter and destiny from "Nés en 1925" is translated as a function of the term "occurrence". The translation is accomplished according to the following argument. In his early essay, Lyotard's impressions regarding matter and reason are moulded by his extensive knowledge of modern art (It is interesting to remark that this factor, precocious in the early essay, recurs throughout Lyotard's oeuvre; indeed, the role of Lyotard's appreciation of modern art is so wide-ranging in his work that the reading I give of his oeuvre, as a thinking through and theorisation of deeply felt affects, could be duplicated by a study of Lyotard's constant efforts to theorise the intellectual and sensuous impact of modern art as mirror of its epoch)³⁶. That reading of modern art depends on a strong distinction made between matter and form. For Lyotard, form can be imposed

on matter by the artist in order to express ideas, feelings, concepts, thoughts, etc. etc. Matter, however, does not bend to the forms imposed on it; on the contrary, the artist's impression is distorted, and added to in a dynamic, uncontrollable process way beyond his influence. Thereby, matter sets limits to the artist's powers of expression; those limits can be radical once the power of matter is released:

[After the war]. Actions are removed from their goals, projects are free of ambition; to undertake a project, to accomplish an action, are now self-validating motions. In parallel, art has abandoned figure, the represented has drowned in representation; Raphaël bores us. Objects have gone through the same liberating process as the goals of concrete projects, surrealist expression has accustomed us to works where signification is left to chance, that is, where man has never been freer ³⁷.

What is true for art is also and more widely applicable to general forms of expression:

To no longer be able to overcome matter, to no longer be able to assign something over and above that which occurs, is the deepest crisis to have

faced our powers of expression for a very long time³⁸.

In Le différend, the above impressions concerning matter and expression are translated as "occurrence" - the occurrence of novel sentences - limiting the validity of given genres of discourse:

The hegemony of the economic genre comes up against only one insurmountable obstacle: the heterogeneity of both phrase regimens and genres of discourse. "Language" and "Being" are not all, there is also occurrence. The obstacle has nothing to do with human will, in any sense of the expression, but has to do with the différend³⁹.

It is at this stage of my study of the affectual context to Le différend that I first note the development of an affect, impression or hypothesis through a demonstration. In the translation of the early terms, 'matter' and 'expression', Lyotard uses precise terms from the philosophy of language developed in Le différend. These new terms, "phrase regimen", "genre of discourse", "occurrence" and "heterogeneity" are the indices that show Lyotard's examination of his affects concerning matter. It is essential, therefore, to go beyond the project of this

chapter and study the development of Lyotard's demonstration of his theory of occurrence through a philosophy of language. This further study will commence, in this thesis, at chapter IV.

Conclusion

To conclude the contextualisation of Lyotard's philosophy of language from Le différend, I will recall the two most important points to have come from the study of Lyotard's work in an affectual context. These points are:

- 1) Le différend is based upon ideas that can be traced back to affectual convictions expressed in Lyotard's earliest work.

- 2) Three of the beliefs or impressions I record both in "Nés en 1925" and Le différend are not defended by demonstration in the latter work. Those affectual concerns can therefore only take on exemplary or illustrative roles in Le différend. If these roles are exceeded in Le différend, then Lyotard's philosophy of language will be reduced to an affectual claim devoid of a full demonstration (see chapters III and IV of this thesis).

However, towards the end of this chapter I noted that Lyotard did give a demonstration of one of the claims I highlighted from "Nés en 1925". In chapter IV of the thesis I will follow through that demonstration by reconstituting Lyotard's philosophy of language independently of extraneous affectual examples and paradigms. Prior to that

study, I will consider the final and most important extralinguistic paradigm to be used by Lyotard in Le différend. That paradigm is given as an appeal to legal imagery and terms; the implications of that appeal will be studied in chapter III.

Chapter III - The legal presentation of the différend

Introduction

In the preceding chapter I began to point out some of the subjective concerns at the basis of Lyotard's work in Le différend. The main conclusion to the work in chapter II was that the claims made by Lyotard in his philosophy of language were functions of beliefs left unproven in Le différend. Lyotard's linguistic analysis was seen to be dependent upon affectual conjecture, sentimental beliefs presented as factual evidence. The question to be answered in this chapter is: Does the conclusion to chapter II hold true for the central concern of Le différend, the concern with the possibility of just judgement?

To answer that question I will investigate Lyotard's presentation of judgement and justice in Le différend, in order to determine whether their treatment is based on unproven belief, or on some further deduction independent of the author's affectual prejudice. The investigation occurs in three stages. The first stage demonstrates that judgement and justice are the central concerns of the book. By central concerns I mean those that give the philosophy

of language its topic and its goal⁴⁰. The second stage introduces a distinction in Lyotard's concern with judgement and justice, between his use of legal terminology and metaphors for the definition of terms in Le différend, and his attempt to investigate the possibility of just and universal judgement. Stage three of the investigation criticises both sides of the distinction from stage two independently of one another.

In that final stage, Lyotard's recourse to legal terminology and metaphors is criticised in the light of my work in chapter II of the thesis; that is, with regard to whether the use of examples and paradigms diminishes the scope and import of the claims made in Lyotard's philosophy of language. Here, my work will draw on Jean-Luc Nancy's and Jacques Derrida's essays on judgement as treated by Kant in his Critique of Judgement. I will show why this difficulty in Lyotard's philosophy is inextricably entwined with Kant's work in the Critiques. And how, therefore, Derrida's and Nancy's works are directly relevant to my study of judgement in Le différend.

The différend before the tribunal

In Le différend Lyotard defines a new concept, the concept of a différend. He gives two definitions. The first definition he offers is the description of différends as conflicts that can never be resolved. This primary definition can be found in works prior to Le différend such as the essay "Le différend" in Le Tombeau de l'intellectuel. However, in the later book a second definition is given where a différend is defined in terms of a philosophy of language. This latter definition enables Lyotard to demonstrate that différends exist as genuine conflicts; that is, there are irresolvable conflicts in reality ⁴¹. From the study of the linguistic basis of real events a set of rules is deduced that establishes the possibility and actuality of différends; this deduction depends on a translation of the initial definition into the terms of the philosophy of language. The différend is given as a linguistic entity in accordance with other linguistic terms such as names, sentences, régimes and genres, so that a study of linguistic properties provides rules for the description of différends understood as real conflicts. It is through this translation that Lyotard can use legal terms such as "litige", "tort", "victime", "témoin", "tiers" and "jugement" together with terms from his philosophy of language. In this chapter I aim to question the validity of that translation.

Thus, although Le différend concentrates on the definition of the différend from within the specific terms of a philosophy of language, both that philosophy and the différend can be mapped onto an analysis of more particular linguistic entities with direct links to events and objects outside the theoretical field of linguistic analysis. For example, instances of différends in practice, such as the différend as it occurs between Jews and Nazis. He also give instances of specific régimes and genres, such as the régime of descriptive sentences and the economic genre of "Capital" ⁴². These examples are practical cases to which the philosophy of language can be applied. The important point is that the application is made possible by a definition of the différend, and the linguistic entities that accompany it, through a presentation independent of the philosophy of language. However, I do not claim, here, that the second definition is necessary for the différend to be applied to practical cases; rather, that the explanation of the application is facilitated by the independent presentation through the use of legal terms.

In Le différend the following definitions:

The différend is the instable state and instant in language where something cannot yet be put into sentences, although that process should be possible ⁴³.

and

Through its rule a discursive genre provides a set of possible sentences, each sentence belongs to a régime. Another genre will provide a set of different possible sentences. There is a différend between those sets (or the genres that lead to them) because they are heterogenous ⁴⁴.

are supplemented by the following definitions that do not belong to the theory of the philosophy of language:

As opposed to a litigation, a différend is a conflict between (at least) two parties that cannot be solved equitably due to the lack of a rule of judgement applicable to both arguments ⁴⁵.

and

I say that there is a différend between two parties when a "ruling" over their conflict is made in the idiom of one of the parties, whereas the wrong suffered by the other party cannot be expressed in that idiom ⁴⁶.

The juxtaposition of a definition from outside the philosophy of language and of a linguistic definition, allows legal terms to encroach upon Lyotard's philosophy of language. The question that arises from this juxtaposition is: Can Lyotard properly combine the two definitions, or will that combination harm the specifically linguistic arguments put forward in Le différend? The practical difficulty in answering this question stems from Lyotard's intricate intermingling of the theoretical and practical expositions of his philosophy in the book. The two approaches are confused in a single style as Lyotard's case is put forward and he mixes linguistic analyses and practical work throughout Le différend; for example:

In the différend something "asks" to be put into sentences and suffers the wrong of not being so done at that very instant.

[My emphasis] ⁴⁷

The notion of a "putting into sentences" is from the philosophy of language; the concept of "suffering a wrong" is taken from the legal exposition.

The problematic mix of legal and linguistic presentation in Le différend comes from the literary genre Lyotard selects in writing his book. Lyotard has chosen a complex genre for the book, it is the writing of an

"Essay", a fragmented combination of theoretical work, remarks, examples and notes:

In the sense of poetics the genre is that of Observations, Remarks, Thoughts and Notes relative to an object, that is, the discontinuous form of the Essay ⁴⁸.

However, in this thesis I will by-pass the question of philosophical genres as they affect philosophical theory and will instead study the results of Lyotard's style without considering that style in itself. I am aware that the question of whether a philosophy can be separated from its genre of presentation is a vexed one, but I cannot here enter into a literary-philosophical debate too far removed from the topic of the thesis. Yet, in a limited sense I do cover the question of genre through my study of the possibility of Lyotard's philosophy independent of its presentation (see chapter IV).

The legal terms used by Lyotard in Le différend are: "judgement", "tribunal", "instance", "law" and "litigation" (jugement, tribunal, instance, loi et litige). All these terms are taken from French jurisprudence and have specific legal senses. Although it does not have a specific jurisprudential sense the term autorisation can be added to the list through the bias of the phrase "l'autorité des

magistrats" which does have a well-defined sense in French jurisprudence (all this information is gathered from the Littré). The above terms recur from Le différend: all except "tribunal" are featured in the index of the book. The legal metaphors used in Le différend are those of production and "to paragraph" (in the senses of the production of evidence and of the adding of clauses, paragraphs, to a law - "faire des représentations" and "paragrapher"). Linguistic effects are described through the legal image of sentences making claims and counter-claims to one another and of paragraphs adding to a text like further clauses to a law (both these metaphors are analysed in chapter IV).

The presence of these legal terms and tropes in Le différend demonstrates Lyotard's dependence on the legal presentation of the différend. It does not demonstrate that those terms are essential to any definition of the différend, nor does it prove that Lyotard uses the legal terms in their correct legal senses. There is no doubt though, that the terms are mixed in with Lyotard's use of a philosophy of language; for example, in the metaphors of production and the adding of clauses, and in arguments such as the following, which uses the metaphor of tribunals presiding over sentences:

Revenge has no legitimate authority, it breaks down the authority of tribunals and depends on idioms, families of sentences, genres of discourse, whatever, that have no right to a hearing. It demands a revision of roles or the institution of new tribunals. It disavows the authority of any tribunal of sentences presented as their unique supreme tribunal.

[My emphasis] ⁴⁹

It is not essential, in this thesis, to demonstrate that Lyotard uses legal terms in their specific jurisprudential role. What is important is that legal examples and metaphors be shown to be part of Lyotard's introduction to the term différend. The fact that Lyotard does not use the term "litigation" in its accurate jurisprudential sense does not imply that he is not using the word in a legal sense. Instead, the legal sense is given through the term's use in a legal context of tribunals, laws and judgements. Lyotard uses a legal context for the definition of the différend; the terms not belonging to jurisprudence that make up that context are: tort, witness, victim and third party (tort, témoin, victime et tiers).

The words from French jurisprudential terminology, litigation, law, judgement, tribunal, damage and plaintive

(litige, loi, judgement, instance, tribunal, dommage and plaignant) do not allow a positive definition of the différend, according to what it is; rather, they introduce and define the différend through a negative definition. That is, the différend is defined in opposition to what it is not or cannot be; as such it is given as outside representation in Law. Lyotard explains that a différend is a conflict, involving two or more parties, that cannot be resolved equitably by a tribunal applying a law. This means that no tribunal can equitably resolve a case that involves a différend, not that a particular tribunal finds itself incompetent with respect to a particular case. This is an important clarification since a judgement of incompetence is a legitimate judgement, and the word incompétance is a valid term in French jurisprudence expressing the judgement of a tribunal which finds a case beyond its competence or outside its jurisdiction. Therefore, if a différend is reduced to a case of incompetence it does not stand outside the law, nor is its definition a negative one. On the contrary, a judgement of incompétance is a legal exclusion from one particular tribunal and not all tribunals.

For Lyotard, a différend stands outside the jurisdiction of all legal bodies such as courts and tribunals, although this does not imply that those bodies cannot judge a case involving a différend, but rather, that they cannot judge a case equitably. This complete exclusion

is expressed by opposing the word différend, which is not a term of French jurisprudence, to the word litigation (litige), the term that indicates a contestation in law. Thereby, Lyotard gives a negative definition of the différend:

As opposed to a litigation, a différend is a case of conflict between (at least) two parties that cannot be solved equitably due to the lack of a rule of judgement applicable to both arguments.

[My emphasis] 50

In French jurisprudence a litige is a case that can legitimately be brought to court in view of obtaining reparation or damages:

Litigation. Jurisprudential term. Contestation in Law. "He added that what he was demanding was in line with the laws that stated: in litigation and before the definitive judgement..."

Vertout, Révol. rom. V, 56..." 51

A différend, as opposed to a litige, can never be equitably contested in law; it is excluded from the possibility of any equitable legal resolution. In order to further classify that exclusion and to thereby specify his definition of a différend, Lyotard constructs a model

explaining in detail how a différend cannot be a litigation. This model is based on the differentiation of the terms tort and victim from the legal terms damage and plaintiff (tort, victime, dommage, plaignant):

Domage. Jurisprudential term, damages and interest, or dommages-intérêts, sum allocated to someone in guise of reparation for a wrong.

Plaintiff. The complaining party in Law ⁵².

(Note: Lyotard does not use the accurate jurisprudential definition of dommage: he does, however, use the term in a legal sense where damage can be proven in a court of law and can then lead to reparation through the payment of damages or dommages-intérêts).

Lyotard constructs his model of a conflict that remains forever removed from the possibility of an equitable resolution around the definition of a tort (tort). In Le différend a tort is defined as a wrong that cannot be repaired through an appeal to a tribunal:

A tort is this: a wrong compounded by the loss of the means of proving that a wrong has been suffered ⁵³.

In this definition of a tort, Lyotard opposes a wrong in the case of a différend to a wrong reparable through the payment of damages awarded by a tribunal. Damages are the reparation given to a plaintiff in the case of a recognised wrong; in a tort the wrong cannot be recognised by a court or tribunal (Note: Although "tort" is a term in English jurisprudence, as is "Tort law", this is not true for French jurisprudence). Thus, in a case involving a tort there is no way of proving the wrong suffered by the plaintiff: "the loss of the means of proving that a wrong has been suffered". It is important to remark, here, how Lyotard has qualified the sense of a tort far beyond its usual sense in order to be able to give an accurate definition of a différend as outside the Law. He further qualifies the definition by adding the concepts of victim and silence to the sense of a tort. When a plaintiff complains of a tort the court cannot recognise the wrong done to that party and the plaintiff becomes a victim, a party excluded from any recourse to the Law:

If there is no one to prove the tort and no one to correspond to it, and/or if the argument for the tort is judged absurd, then the plaintiff is ruled out of court. The tort he complains of cannot be noticed. The plaintiff becomes a victim⁵⁴.

Wrong has been done to a plaintiff, yet that person cannot prove it and therefore the case is rejected by all tribunals (the French jurisprudential term "débouté" describes the rejection by a tribunal). Thenceforth, the plaintiff is a victim reduced to silence; silence is Lyotard's mark to indicate a plaintiff rejected by all tribunals:

The plaintiff is listened to, but the victim - maybe one and the same person - is rendered silent.⁵⁵

From the model given above I deduce the following definition of a différend as it stands in opposition to a legal litigation: a différend is a conflict involving two or more parties where, whenever a tribunal passes judgement over the conflict, one of the parties becomes a victim - as the victim changes so does the offending tribunal. The grievance of a victim cannot be recognised by a tribunal, whose judgement is therefore neither equitable nor fair. Before such a tribunal the victim is rendered silent:

I would like to call différend a case where the plaintiff is stripped of the means of argumentation and thereby becomes a victim⁵⁶.

Having deduced this comprehensive definition of a différend in opposition to legal terms, I claim to have proven Lyotard's dependence upon the legal presentation of différends in Le différend. I will now analyse the consequences of that dependency.

Distinction: Judgement as opposed to the judgement of tribunals

Prior to proceeding to the critique of the role played by Lyotard's legal model in his philosophy of language, an important distinction must be drawn between judgement as it operates in the creation and analysis of linguistic entities (genres, régimes of sentences, idioms), and judgement as passed by tribunals.

Where there is a différend the party in the conflict that becomes the victim alters according to which tribunal and by which law the conflict is judged. Furthermore, no matter who becomes the victim, where there is a différend subjected to the judgement of a tribunal there must be a victim suffering a tort or wrong. This state of affairs implies that the victim in a différend can be changed from one party to another through a change in the case put to the tribunal or through a change in tribunal. It is in the

instigation of such an alteration that a judgement other than the judgement of tribunals is put into play.

In defining the différend according to tort and victims, Lyotard has given a negative definition with respect to legal terminology and has, therefore, set the différend outside legal judgement. This exclusion is universal since the silence that can fall on any of the sides in a différend is not defined as relative to a particular tribunal but is given as a consequence of the différend's exclusion from equitable judgement by all tribunals. Hence, the judgement that a conflict is a différend must be made by a body other than a legal tribunal. There must be a form of judgement distinguishable from the judgement dealt out by tribunals, a judgement able to recognise the tort present in différends.

As I have argued above, Lyotard uses both the negative definition and the necessary exclusion of différends from the law of tribunals to introduce what is also a term from his philosophy of language - a différend is also a linguistic state. In Le différend Lyotard juxtaposes both definitions, linguistic and legal; for example:

To do justice to différends is to determine new addressees, new significations and new referents so that tort be expressed and plaintiffs cease

being victims. This requires new rules for the formulation and concatenation of sentences. [...] It must be possible to express all tort in sentences ⁵⁷.

[My emphasis]

In the negative definition of the différend as opposed to a litigation, Lyotard is referring to tribunals and other specifically legal institutions. When he speaks of the différend in the philosophy of language he refers to a judgement other than the judgement of tribunals. That is, a judgement where new linguistic formulation allows a tort to be judged through the creation of an idiom that can express the wrong done to the victim and hence avoid that person's silence:

In the différend something "asks" to be put into sentences and suffers the wrong of not being so done at that very instant. [...] It is the goal of a given literature, philosophy and, possibly, of a politics to witness différends by finding idioms to express them. [...] We must avoid those silent negations ⁵⁸.

In Lyotard's philosophy of language there is a form of judgement independent of the judgement of tribunals and a distinction must be drawn between the two forms. There are

three reasons behind this statement, all are explained above; the three reasons are:

- 1) The victim in a différend can be altered according to the judging tribunal (This is also the condition for the third reason below).
- 2) No tribunal can determine whether a conflict is a différend.
- 3) The formulation of new idioms for the expression of a wrong suffered by a victim can change the victim into a legitimate plaintiff.

Thus, in the recognition of différends and in the creation of new idioms a judgement is exercised that cannot be the judgement of tribunals as it is understood by Lyotard in Le différend. For him, the judgement given by a tribunal follows set rules, applies given laws and is only receptive to idioms compatible with its own:

[...] The tribunal provides "this" régime and/or "that" genre over all others, and, by transcribing the heterogenous sentences at play in society and in the discourse on society into its own idiom, it necessarily inflicts a tort on the others ⁵⁹.

So, from this point onwards the distinction between a judgement of tribunals, the cause of torts, and the judgement of the judgement of tribunals, which seeks to redress torts, must be considered each time the question of judgement appears in my critique of Lyotard. In that distinction, philosophy and justice (the Law) are opposed, the former judges the latter because, for Lyotard, philosophy must act as a witness for the victims of différends:

By showing that the concatenation of sentences is problematical and that the problem is political, we will create a politics away from the politics of "intellectuals" and politicians. Witnessing the différend ⁶⁰.

For ease of comprehension, during the rest of this chapter I will call the judgement of the judgement of tribunals, adjudication. In chapter VI of this thesis, I will show how adjudication is based on a theory of the feeling of the sublime. Through the sublime feeling a wrong can be recognised through a victim's silence. The theory based on the sublime is taken, in a large part, from Kant by Lyotard in order to make it possible for him to escape from the constraints of a judgement dependent on the application of given laws.

Critique of Lyotard's use of legal terminology and metaphors

My critique of Lyotard's use of legal terminology and metaphors follows three steps. First, I make general criticisms of the reference to legal terminology in Le différend so that I may specify Lyotard's idea of the judgement of tribunals. Second, given the answer to the above criticisms I construct a model of Lyotard's understanding of the law of tribunals. And third, following criticisms of Le différend made by Alain Badiou, I show why Lyotard's use of legal metaphors is prejudicial to his philosophy of language. The central point studied in these steps is Lyotard's privileging of the role of objective evidence in tribunal judgement. My claim will be that Lyotard's concentration on the objective nature of evidence leads him to an overdependence on the régime of cognitive sentences in his philosophy of language.

Three questions must be put to Lyotard once he has negatively defined the différend as outside the possibility of equitable legal resolution. Because the différend has been defined negatively with respect to legal terms, the three questions can be translated into questions concerning those terms; in this second form they will serve to clarify Lyotard's definition of the judgement of tribunals. The questions are: What makes a litigation an acceptable case

for equitable judgement before a tribunal? Who can become a plaintiff before a tribunal? What is it that tribunals accept or reject as a legitimate case for reparation?

Lyotard's answers to these questions are centred on one idea: a wrong can be subject to litigation if the wrong can be shown to be genuine following procedures acceptable to a given tribunal. That is, a plaintiff must establish that the wrong suffered is genuine and the plaintiff's argument to that effect will only be accepted if formulated according to rules as to the establishment of reality set down by the tribunal:

The plaintiff affirms that something is, he must demonstrate that existence in well formulated sentences and according to procedures for the establishment of the existence of their referent. Reality is always the onus of the plaintiff ⁶¹.

If the plaintiff cannot establish that reality, then he becomes a victim and suffers a tort. In the case of a différend no one tribunal can accept as genuine all the wrongs suffered by all sides of the conflict; therefore, at least one of the sides must become a victim whose claim to justice cannot be articulated before a given tribunal. Note how in my interpretation of Lyotard's definition, I have substituted the notion of "genuine" for Lyotard's "real".

This substitution is necessary if my presentation is to avoid difficulties in the understanding of Lyotard's theory; for him, the "real" varies according to different tribunals, this notion clashes with the more common view of reality as a single independent norm. I have analysed Lyotard's demonstration of the dependence of reality on procedures of verification in chapter IV of the thesis. In this chapter I will study and criticise this idiosyncratic definition of reality in its role within legal judgement. Prior to that study I retain the distinction between the plaintiff's onus of having to prove the genuine nature of the wrong suffered, and the court's notion of reality as given in the statement: "Reality is always the onus of the plaintiff" (My emphasis).

Lyotard defends his view, of tribunals depending on the establishment of reality and of différends as being cases where that establishment cannot be achieved, by giving a paradigmatic différend vindicating his thesis concerning the primordially of reality in the judgement of tribunals. The différend in question is between the revisionist French historian Faurisson and any witness of the gas chambers used in the perpetration of the Nazi holocaust. Faurisson claims that no one can prove to him the use of gas chambers in the decimation of millions of jews; or rather, no one has yet proven to him that the chambers were put to such a use. In his argument, Faurisson

applies the criterion that something is real if an eye-witness can report it. Therefore, given the absence of a witness to the murder of millions, he claims that there is no proof as to the holocaust. This is how Lyotard reports Faurisson's argument and criterion:

"I have analysed thousands of documents. I have tirelessly questioned historians and specialists. I have searched in vain for a single deportee able to prove to me that he has really seen a gas chamber through his own eyes". To "really see" a gas chamber "through one's own eyes" is the condition which gives one the authority to say that it exists ⁶².

Where lies the différend between Faurisson and the witness? It lies in the fact that for Faurisson the statement "seen through one's own eyes" can only prove the deaths of millions if the witness saw millions die. Faurisson's case is a strong one because almost all the witnesses who could satisfy his criterion are dead. Witnesses of millions of deaths were in turn sent to their deaths so no one person has witnessed mass murder. Lyotard accepts this argument as in some sense valid and transcribes it into his theory of différends (in no way do I here infer that Lyotard agrees with Faurisson's verdict). Faurisson's rule for the establishment of reality

effectively demands of millions to testify as to their own murder, they cannot do so, therefore he concludes that no one has yet proven - but, in fact, can never prove - to his satisfaction the use of the chambers for mass murder. Although some witnesses know (from documents, from experience) and feel that millions were murdered, that knowledge can never convince Faurisson; there lies the différend.

No tribunal can at the same time accept a witness's proof of the murders and Faurisson's rule for the establishment of reality. This is because any tribunal must either, agree with the witness and not adopt Faurisson's rules on the subject of reality; or, the tribunal must agree with Faurisson and hence ignore the witness. According to Lyotard, in both options someone suffers a wrong and there is always a tort involved in the tribunal's judgement. However, it is important to note how this deduction of a différend depends on the acceptance of the inner consistency of both arguments; that is, one must accept Faurisson's criterion as a possible measure for the establishment of reality and one must see how it is possible for a witness to have knowledge of the deaths of millions. Once this caveat is taken, then it becomes apparent that whenever a tribunal judges the différend a tort must be inflicted. In Lyotard's analysis, a tribunal applies a single rule for the establishment of reality and

it cannot apply one rule consistent with the claims of both sides of the différend.

I am critical of Lyotard's use of the Faurisson paradigm because it allows Faurisson to make an inconsistent claim and then takes it as if a tribunal must accept the claim. In fact, Faurisson's argument is inconsistent; that is, it cannot support its conclusion through the points made prior to that conclusion since one of those points involves excluding witnesses for not being dead. The question is: How can Faurisson claim that they should be dead given his own ignorance of the chambers in operation? He can only make such a claim by assuming that the gas chambers did kill all witnesses of their functioning. Not only does this assumption not make sense if one takes into account the operators of the chambers and Jewish witnesses involved in the preparation of the victims (as, for example, the barbers forced to cut the hair of those about to die - see, the witness involved in that task interviewed by Claude Lanzman in his film Shoah). But also, Faurisson assumes the point he insists no one has been able to "convince" him of, namely, that the chambers did kill systematically. Must we, thereafter, take his affirmation of "tireless analysis" and "vain search" seriously?

All one can learn from Faurisson is the dishonesty of demanding of witnesses that they witness the deaths of millions when all along the assumption has been made that no such witnesses can exist. After Faurisson's intervention the question "Was there a holocaust?" is in no way advanced. This does not mean that it cannot be advanced, it merely forces tribunals to treat Faurisson as he deserves: to rule him out of court. There is no différend here, and Lyotard has chosen a false paradigm to support his argument ⁶³.

Lyotard allows Faurisson to represent a legitimate side in a différend because Lyotard is dependent on a model of tribunals as requiring proof of the reality of a claim. Faurisson does require such a proof and is therefore adopted as a valid example. In fact, Lyotard can refute Faurisson, but only if he gives up the dichotomy: adjudication/judgement of tribunals (see previous section). In his understanding of adjudication independent of the judgement of tribunals the silence of a witness can be interpreted as a sign of the existence of the gas chambers:

Silence does not indicate the negated instance, but only indicates the negation of one or more instances. When survivors remain silent one may understand: (1) the situation at hand is no business of the addressee; or, (2) the situation

did not occur; or, (3) one can say nothing of the situation; or, (4) the survivors have no business discussing the situation. Any combination of these negations is possible ⁶⁴.

However, instead of taking the above judgement as the possible judgement of a tribunal and then refuting Faurisson, Lyotard takes him as presenting the paradigmatic case of a différend before the judgement of tribunals. Thereby, Lyotard privileges a model presenting tribunals as always dependent on an establishment of reality and further supports his definition of différends given as the cases excluded from an equitable judgement before tribunals. The dichotomy adjudication/judgement of tribunals supports Lyotard's legal definition of the différend. I will now proceed to a critique of that dichotomy with respect to its foundational role in the definition of the différend.

Alain Badiou ⁶⁵ (in "Custos Quid Noctis?" Critique, November 1984) criticises and notes the problems ensuing from Lyotard's restriction of legal justice to judgements on the reality of a referent. Thus, Badiou remarks upon Lyotard's limiting of judgement to a particular case:

For him [Lyotard] everything turns about the question of the referent. This is like a judge, in particular an English judge, who seeks to

establish, in a ruled manner, which facts correspond to the statements of the parties in dispute ⁶⁶.

According to Badiou, this prejudice towards a particular form of judgement is carried through to Lyotard's philosophy of language, where the cognitive genre is restricted to those sentences that establish the reality of a referent. Because legal judgement is deemed to be solely dependent upon a correspondence to reality, the model of judgement in the philosophy of language gives priority to a restricted definition of cognitive sentences. Insofar as a false dichotomy has been introduced into Lyotard's legal theory, the same flaw is extended into the philosophy of language:

[...] The clumsiness of the legal metaphor is extended by Lyotard to the definition of knowledge (of the sentences belonging to the cognitive genre) ⁶⁷.

So when Lyotard defines the cognitive genre as distinct from other genres because it appeals to the criterion of the "real". Badiou contends that this is an incorrect claim given the genre's function in deciding what is true, a function taking account of criteria other than reality. To emphasize this point, Badiou gives the example

of mathematics, where there need not be an appeal to reality in order to establish the correctness of a claim:

Mathematical sentences - and, in my opinion, all sentences the stake of which is truth - falsify that [Lyotard's] definition of the cognitive. This means that there "is" in mathematical thought is not governed by any procedure for the establishment of a real referent ⁶⁸.

Badiou shows Lyotard's definition of the cognitive in his philosophy of language to be governed by the legal context used in the definition of the term différend. Furthermore, Badiou demonstrates the inappropriate nature of the application of Lyotard's legal analysis to his philosophy of language. The cognitive genre is defined inaccurately due to this mis-use of the legal paradigm:

Lyotard's epistemology [his definition of cognitive sentences] remains critical (juridical). [...]. It is not directed according to the right paradigm ⁶⁹.

My remarks on the topic of the Faurisson case rejoin Badiou's analysis of the cognitive genre. Where I found a false dichotomy supporting Lyotard's legal definition of a différend, Badiou finds the same dichotomy behind Lyotard's

definition of the cognitive genre. The two criticisms point to a serious flaw in Lyotard's work in Le différend. In his introduction to the concept of a différend Lyotard uses a legal model. Within the model there is a distinction drawn between two forms of judgement: the judgement of tribunals and adjudication (as defined in the previous section). The distinction has been shown to be without foundation (see my remarks on Faurisson) yet it supports important aspects of Lyotard's philosophy of language: the definition of the cognitive genre and the distinction between adjudication and judgement according to the cognitive genre. There lies the mistake at the foundation of Lyotard's philosophy in Le différend: two presentations are given of the key term, the différend, the first presentation through legal terms is inaccurate and prejudices the second presentation in a philosophy of language.

Summary of results so far

Earlier in this chapter I demonstrated how Lyotard used topics extraneous to his philosophy of language to introduce the concept of a différend. The important conclusion was that such illustratory and introductory terms must not prejudice the definition of a différend in the philosophy of language. However, in the analysis of the role fulfilled by Lyotard's work on justice in the

presentation of his theory, I noted the incomplete and inaccurate nature of Lyotard's theory of justice and its prejudice towards a restricted form of judgement in Law. Furthermore, I noted - following Alain Badiou - how the inadequacies of the analysis of justice were carried through to the philosophy of language. This last point is very damaging for the project of defining a new philosophy of language, because it shows the influence of unsound practical analyses on that philosophy. In the definition and the use of the metaphor of the judgement of tribunals, Lyotard undermines his philosophy of language.

Jean-Luc Nancy and Jacques Derrida on judgement in Lyotard and Kant

Jean-Luc Nancy and Jacques Derrida take the criticism of Lyotard's analysis of judgement a step further than Alain Badiou's examination of the influence of a model of justice upon a philosophy of language. They investigate the question of judgement as the foundation of Lyotard's philosophy of language. That is, they consider the role of judgement in the determination of the goals of Lyotard's philosophy and study the implications for a philosophy of language presented as the basis of a critique of judgement. Instead of criticising the mistakes following from Lyotard's legal theory, Nancy and Derrida note the problems

inherent in a philosophy of language that is part of a wider project concerning the investigation of the possibility of just judgement. Their critique is extended thus far by the intermediary of an analysis of the role of judgement in Kant's Critiques and by drawing parallels between Kant and Lyotard's work. These parallels are openly admitted by Lyotard in his books (for example, in Au Juste, L'Enthousiasme and Le différend).

Nancy's and Derrida's work on judgement, as it appears in Lyotard's books, follows four steps:

1) They isolate judgement as the central, most important concept in Lyotard's work.

2) They state that the import of Lyotard's work lies in his investigation of the role of judgement in the foundation and deconstruction of philosophies; it is therefore of importance to their own philosophies of difference and disintegration.

3) Both Derrida and Nancy then note how Lyotard's concept of judgement is evolved from Kant's work in the Critique of Judgement.

4) Finally, they proceed to a criticism of judgement in Lyotard's work through analyses of Kant's Critiques as they are relevant to Lyotard's project.

In this thesis, the importance of Derrida's and Nancy's work lies in their criticisms of Lyotard through the bias of Kant. I will therefore concentrate on point 4) and only give short commentaries on points 1) to 3) by way of introduction.

The essays and books I refer to in this section are: by Nancy, "Le Kategorien de l'excès" and "Lapsus Judicii" in L'impératif catégorique, and "Dies Irae" in La faculté de juger; by Derrida, "Parergon" in La vérité en peinture, "Economimesis" in Mimesis des articulations, "Préjugés, devant la loi" in La faculté de juger and D'un ton apocalyptique adopté naguère en philosophie. All these texts are on Kant or Lyotard (or on both of them). La faculté de juger is a collection of essays dedicated to the topic of Kant's and Lyotard's work on judgement and is therefore of direct interest to the work here at hand:

[...] Here, six philosophers examine how to judge in the absence of laws. The topic is set through the writings of one of their number, Lyotard, studied at the colloquium in Cerisy in 1982. This

book's title [La faculté de juger] alludes to Kant ⁷⁰.

The primary reference to Lyotard in the texts listed above is through judgement and its relationship to the foundation of philosophy as seen within the context of philosophy caught between a modern and a post-modern moment. What is meant by that context is philosophy in crisis, philosophy questioning its foundations and its right to give itself foundations. More precisely, Derrida and Nancy see Lyotard as important insofar as he thinks through the possibility of universal judgements and laws governed by a foundational philosophy - in this case, a philosophy of language. The two quotes, below, illustrate this position with regard to Lyotard's work:

A becoming-modern and post-modern of thought, of art, or of politics held as one of its specific aspects its self-presentation as pure "evidence", like a type of infra-Hegelian necessity. [...] One noted the fate or drift of the epoch. One described a collapse or a fragmentation, dispositives, branchings out, desires or pleasures. Lyotard reminded us that all this implied judgement - in both senses of the expression: it already involved judgement and it insisted that one judge ⁷¹.

[...] in this epochal scene, the scene of modernity in the belief of having finished with judgement, the scene where authority reverts to the judgement of philosophy, from Plato to Hegel, Jean-François Lyotard comes and tells us: take care, hold on, there is a paradox, and that paradox is the signature of the post-modern, in fact judgement is neither founder nor founded, it may be secondary, yet for that very reason there is no question of being rid of it; and, if you hope to escape judgement, you will not be left in peace ⁷².

The closeness in content of the two quotes given above is striking. Derrida and Nancy both take note of the same lesson to be learnt from Lyotard: in the founding and destruction of philosophy by philosophy - the elusive post-modern moment - an act of judgement has to be made which must itself be judged. There is judgement when laws for future judgement are given; when those laws are repeated there is also judgement. Furthermore, the acts of jurisdiction and repeating of laws are in turn open to judgement, "préjugés", called before the Law.

In the question of judgement at the foundation of philosophy Lyotard returns to and resembles Kant. This is because Kant is at the same time a philosopher of the

critique of judgement, in the Third Critique, and a philosopher of judgement at the foundation of philosophy, through his dependence upon deductions in each of the Critiques. A deduction in Law is the answer to the question "Quid juris?", "who has the right to judge this case?". In Kant's work, the deductions (for example, "The deduction of the pure concepts of Understanding") are the arguments presenting the "legal" deduction of the right of faculties to legislate given realms; they are therefore the judgements founding each Critique as legitimate and where the jurisdiction of a faculty is justified and delimited:

"Jurists" call "deduction" the proof answering to the question "Quid juris?" in a law suit. The deduction is the establishment of right: the deduction of the pure concepts of the understanding must establish the right of reason in all cases ⁷³.

Jean-Luc Nancy is very clear on this bringing together of Kant and Lyotard, his work sets down each point where they converge and, more importantly, where they diverge in their interpretations of judgement. And it is at the point, where Kant and Lyotard are explicitly compared, that I must separate Nancy's and Derrida's arguments. This is because Nancy makes the step overtly; in his work on Kant he refers directly to Lyotard (as in the post-script to "Lapsus

Judicii"), and in his work on Lyotard he refers directly to Kant:

Lyotard exploits Kantian resources - or a fundamental Kantian resource - in the answering of a question that is not Kantian ⁷⁴.

(Lyotard, in return, sets aside a long footnote to acknowledge Nancy's influence on his own work on Kant in L'Enthousiasme.) Derrida, on the other hand, does not connect criticisms of Kant and Lyotard overtly in a same text; instead, the comparison is made through a set of key concepts and metaphors as they recur in his work on Kant and in his work on Lyotard. Although this difference in the presentation of argumentation between Nancy's explicit approach and Derrida's implicit allusions does not imply a corresponding difference in the points of their criticisms - in fact they both rely on one another's work - I will analyse their studies independently, in order to avoid any confusion due to their varying methods.

First, I will investigate Jean-Luc Nancy's analysis of Lyotard and Kant on judgement. Nancy's criticisms of Lyotard stem from differences in their interpretation of Kant. At first, these interpretations appear to be very close - I have already mentioned Lyotard's debt to Nancy -, however, in practice small divergences in their respective

readings turn out to have great effects upon their interpretations of judgement in Kant's Critiques. The two interpretations are too long and complex to give in detail in this section, so it is essential to retain the following guiding principles: In order to ensure the contingency of all judgements, Lyotard uses the notion of sublime occurrence, the occurrence of un-ruled events, whereas Nancy appeals to the Categorical Imperative from the Second Critique, the law obliging reason to act without the provision of rules governing that action. The occurrence of excess is ontological according to Lyotard, it is ethical according to Nancy. For both of them excess is that which cannot be regulated or judged by pre-given rules and therefore calls for judgement to follow new rules or not follow rules at all. For Lyotard, excess calls through a sublime feeling; for Nancy, it calls through an appeal to be sublime of the Categorical Imperative.

How does his different interpretation of Kant allow Nancy to criticise Lyotard's work on judgement? In order to answer the question the conflict of interpretations must be clarified. To do this I will retrace the dispute from Nancy's post-script at the end of "Lapsus Judicii" up to his direct criticism of Lyotard in "Dies Irae". In the remark in "Lapsus Judicii" the main point of divergence between Nancy and Lyotard is singled out. The point is

where Lyotard excludes the notion of a juridical fiction from his analysis:

Lyotard intends to keep away from the motif of a "fictioning" coming, in his opinion, from a problematic of foundation and of the origin. He claims that in Kant's work on judgement "the problematic of the origin is reversed in favour of the question of ends". [...] It does not follow from Lyotard's point, that the juridical fiction plays a substitute or supplementary role to a dislocated origin, thereby leading surreptitiously back to a general metaphysical thematics of the origin ⁷⁵.

The above quote is a reaction to the following remark from a footnote on Nancy in Lyotard's L'enthousiasme:

Unlike Nancy, I refuse to associate modes and ways of presentation to "figuration" or fictioning. It seems to me [...] that such terms come from a problematic of foundation or of the origin ⁷⁶.

At stake in Nancy's comment are two different understandings of the function of judgement in the Third Critique in establishing areas of legitimacy for the three

faculties. For Nancy, those areas of legitimate judgement are "fictioned", created through a juridical deduction modeling figures and types from different areas as if they could be legitimately applied to another area. Thus, the self-consistent and auto-legislated scientific model is used analogically in the justification of the legitimacy of pure reason:

The self-consistency and auto-legislation of sciences is the exact reason why they are qualified as models. [...]. But reason cannot be found as such in the sciences and must therefore judge them. This is the properly juridical sense of the critical question: "Quid juris?". It does not mean that the sciences must be legitimised but rather, that they must give figure to reason ⁷⁷.

The jurisdiction of a given faculty is always a fiction; this is because the function of judgement is not to measure all things from a metaphysical origin, but to create laws for their legislation. Nancy explains that function as an obligation. According to him, juridical "fictioning", to fictionalize legality, is an obligation prescribed by the Categorical Imperative addressed to freedom (and not to a metaphysical subject). To be obliged to act is to be obliged to legislate, because a free action

creates laws instead of obeying them. The form of the laws to be applied cannot be known, for then the imperative would not be addressed to freedom. Laws must therefore be fictioned, given the necessary non-existence of a-priori rules for free action, and juridical "fictioning" is the creation of laws in the knowledge that they must fall short of the obligation of the initial imperative:

Act so that the maxim of thy will can always at the same time hold good as a principle of universal legislation ⁷⁸.

The imperative categorises its addressee: it affirms his liberty, makes evil his responsibility, and destines or abandons him to law ⁷⁹.

Judgement, as an obligation, is conditioned by an imperative that cannot prescribe the right law but only obliges judgement to legislate. Furthermore, the imperative is the only law that is not a fiction and it is the only law that cannot be "fictioned". In this, it is sublime because it exceeds all laws of knowledge and the legislative fictions of creative judgement. No judgement can be equal to the Categorical Imperative and Nancy claims, therefore, that it must be the sole source of sublimity. This claim allows him to reverse the question of judgement from Lyotard's definition, where particular cases

fall outside the domain of legitimate judgement, which must therefore make as if that case can be judged according to a legitimate law, to the situation where judgement, conditioned by the sublimity of the categorical imperative, must necessarily invent all laws as if they applied legitimately to given cases. (Note that in both interpretations there is a form of invention through the pretense of making laws apply as if they were legitimate.) The difference lies in the source of the necessity of invention: for Lyotard, it issues from the sublimity of particular cases; for Nancy, it devolves from the sublime Categorical Imperative.

My presentation, here, of Nancy's interpretation of Kant on judgement has been necessarily succinct. I do not purport to have given a definitive or even complete account of his theory. The point of the short introduction to Jean-Luc Nancy's work was to give the background to his two main foci of attack against Lyotard's position: firstly, Nancy enquires whether Lyotard's interpretation of judgement can hold true without the Categorical Imperative; secondly, he criticizes Lyotard's association of the sublime to particular cases. In this chapter, I will concentrate on the first of these criticisms (the second is treated in chapter VI, on the sublime).

In his essay "Dies Irae" Nancy makes six critical points against Lyotard's interpretation of judgement in Kant. Two of the points concern the sublime and will be considered in chapter VI. In the four remaining points two moments must be distinguished: the moment of Kantian interpretation and the moment of a theory of judgement. I am interested in the second of these, where Nancy's four points become:

- 1) Lyotard cannot preclude universal laws in judgement and leave judgement free to be conditioned by any particular case.
- 2) It is a mistake to dissociate the reason we have for judging and the manner in which we judge.
- 3) Judgement must not measure up to empirical and theoretical possibility but to the "impossibility" of the Categorical Imperative.
- 4) Therefore, judgement must not be conditioned by events but instead, judgement must make it possible for events to be presented.

I will now work through the reasoning given by Nancy in the deduction of the above points. As I present his

argument I will put the points into the terminology of différends and legality used earlier in the chapter.

Jean-Luc Nancy's first point notes Lyotard's substitution of Kant's totality of a unity of ends by the horizon of a multiplicity. This means Lyotard does not subsume all judgements to the common measure of a final purpose; instead, for him, justice is to legislate against the possibility of a single end, and to prescribe the respect of individual laws without bringing them into a unified totality under a single principle:

Thenceforth, justice is never to say the law - one law for all language, terror. And the only paradoxical universal prescription is: "prescribe the observance of the justice particular to each language (game)" ⁸⁰.

Nancy recognises two terms in such a justice: a principle of plurality and a given, limitless set of particular instances. Each term serves to judge the other. The principle prescribes that particularity is a universal state; the set of particulars prescribes one or the other particular law to the universal principle. The problem is that Lyotard's principle does not leave each particular law absolutely undetermined, because they cannot contradict the

judgements - and this is the issue at stake in Nancy's first point in "Dies Irae".

The second criticism made by Nancy against Lyotard is implied by the first. If Lyotard's principle of plurality determines the form a particular law can take, then the particular is not the foundation for indeterminacy but rather, it is the principle itself:

[...] indeterminacy is hence not at stake in the calling [assignation: writ of summons] of particular cases, but in the nature of judgement itself ⁸².

As shown above, for Nancy, judgement devolves from freedom's obligation to the Categorical Imperative and must itself be judged as a function of the imperative. This is also true of Lyotard's theory except, for him, judgement is conditioned by the principle of plurality. Nancy's point is that for both of them every individual judgement is already prepared by a pre-condition, either the Categorical Imperative or the principle. Hence, like Nancy, Lyotard cannot dissociate how we judge the particular from the reason why we judge:

principle. For example, a particular case cannot prescribe a universal law:

However, the first principle [the universal principle] does not imply the second [the existence of particular undetermined cases], for example: the particular can function as if it was a totality ⁸¹.

Nancy is here alluding to particular cases leading to laws such as "There is but one true law" and "Killing is always wrong"; these laws contradict the initial principle of plurality.

Lyotard cannot at the same time preclude universal laws and leave particular laws absolutely undetermined. In the language of Le différend, this criticism made by Nancy implies a prejudice on Lyotard's part against certain parties involved in a différend. If a différend is defined as a conflict that cannot be resolved, then any party making claims as to a definitive solution to the différend is legislated against a priori. In effect, Lyotard's universal principle of plurality (as given by Nancy) and his definition of différends do not always provide a basis for just judgement; on the contrary, in certain circumstances resolvable conflicts can be transformed into différends through the bias against universal laws and

Why we judge and How to judge are two questions that cannot be as easily dissociated as Lyotard leads us to believe⁸³.

This is very important since Lyotard's theory depends on individual cases being free from universal laws so they may strike us as sublime.

In the language of Le différend, Nancy's second point questions Lyotard's negative definition of a différend as outside legal judgement. There is a tension between the différend recognised through the silence of a victim suffering from a tort, calling for judgement in a new idiom, and the différend defined as a conflict outside the possibility of equitable legal resolution. The second definition conditions the judgement and new idiom of the first in the same way as the principle of plurality conditioned each individual judgement of a particular case. Any new judgement of a case recognised as a différend must accord with the definition of a différend where the idiom or judgement claiming to be a definitive equitable judgement is excluded a priori. Thus, Nancy has shown how the legal presentation of différends is prejudicial to the sublime nature of our recognition of individual cases of différends: Lyotard cannot at the same time give a theoretical definition of différends and base them on the

occurrence of unconditioned events, because the theory necessarily conditions our judgement of those events.

I will not develop Jean-Luc Nancy's third and fourth criticisms of Lyotard because they are restatements of the first two in a language enabling Nancy to demonstrate how his reading of Kant offers solutions to the problems encountered by Lyotard. The restatement does not offer any further comments on the intrinsic faults of the definition of différends and I will only take it into consideration in chapter VI when I study Nancy's work on the sublime.

The main outcome of Nancy's analysis of Lyotard's work is the disclosure of the fundamental paradox of the definition of the différend⁸⁴. Lyotard cannot define a différend as outside the possibility of legal resolution without creating laws to govern such a resolution. When Nancy notes Lyotard's false exclusion of the fictionalizing aspect of judgement, he pin-points the necessary relationship between the judgement of tribunals and any form of judgement presented as more just. The law of tribunals conditions the laws outside tribunals. Once again the distinction: judgement of tribunals/adjudication, has been demonstrated as artificial; yet, as I showed earlier in this chapter, it is essential to Lyotard's philosophy in Le différend. Jacques Derrida investigates the mechanism of the relationship between those two different forms of judgement. So I will now turn to his analyses of the logic

of foreclosure and exclusion at work in Kant's and Lyotard's definitions of judgement.

The first remark to be made concerning Derrida's work is that he, unlike Nancy, does not offer an explicit criticism of Lyotard's philosophy; instead, his criticisms of Kant hold true for Lyotard. Derrida approaches Lyotard through the bias of a reading of Kant. Given the implicit nature of this critique, I will first demonstrate Kant and Lyotard's association in Derrida's work. Then, I will demonstrate how the deconstruction of Kant also applies to Lyotard's definition of judgement. At no time, though, do I suppose Derrida means to associate the two, what must be proven is that his deconstruction can be transferred from one to the other.

The first indicator to be used in drawing parallels between Kant and Lyotard in Derrida's work is in Jean-Luc Nancy's "Lapsus Judicii". In the post-script addressed to Lyotard, Nancy notes that the "fictionalizing" of juridicality cannot be excluded from Kant's work. It is not supplementary to a politics of the establishment of the right of faculties over given domains. The following reasons are given in defence of Nancy's statement:

1) Kant is trying to establish juridicality under one law, the Categorical Imperative.

2) The logic of supplementarity does not allow for the role of fiction to be excluded from the main body of Kant's thesis. The first point has already been studied in my work on "Dies Irae" (above). However, the second point refers directly to the work of Jacques Derrida, "See Derrida on the logic of supplementarity", thereby giving him as the forms for a critique of Lyotard through Kant.

Thus, according to Nancy, Derrida's deconstruction of Kant's critical philosophy through the analysis of the logic of supplementarity also applies to Lyotard's philosophy based on différends. In his work on Kant, Derrida demonstrates why a différend cannot be defined as excluded from the creation and rule of the judgement of tribunals. The judgement of tribunals is not a removable supplement to the just adjudication of différends. In presenting Kant's critical system as dependent on a set of incomplete exclusions, Derrida makes a point directly applicable to Lyotard's own system based on the exclusion of types of judgement. The parallel drawn between the two theories is all the more valid given Lyotard's indebtedness to Kant's critical philosophy. Moreover, Lyotard adds further exclusions to Kant's system by separating judgement from all notions of origin and foundation given in the Critiques:

To grasp the Kantian "revolution" in the project it does not display, one must think those "passages" [the passages between areas of legitimacy] otherwise than as supplements destined to relate fragments from an dislocated origin, Being or subject ⁸⁵.

There is a further connection, explicit in Derrida's own work, between Lyotard and Kant on the logic of supplementarity. The connection is made in the essay "Préjugés. Devant la loi" from the book on Lyotard and Kant La faculté de juger. In the text, Derrida explores the limits of judgement through an analysis playing on the literary and topical interpretation of Kafka's short story "Before the law". The point Derrida makes is that judgement, legality and laws have to be interpreted in the same way as literary texts; that is, in judgement and in literary interpretation there is an inter-play between the legal and the outlaw, between judgements following laws and judgements instituting new laws and altering old ones. Derrida exploits the instance of a literary text "Before the law", on the law and (less evidently) on the legality of literary texts, in order to study the connection of the legal and the outlaw in the re-interpretation of the borderline dividing them. This process of continual re-interpretation and further judgement demonstrates the impossibility of setting unalterable limits to legality and

of defining laws once and for all. All interpretation of laws is always already caught up in an ongoing process of legitimation:

In the ungraspable instant where literature passes laws, literature defines itself. It takes up positions on both sides of the line dividing the legal and the outlaw; there, literature writes what it is to be before the law, being at the same time "before the law" and "prior to the law" [...]. Prior to being before the law [...]

86.

Derrida's interpretation of "Before the law" is directed at both Kant and Lyotard. He wants to demonstrate that what holds true for judgement and literature in Kafka is also applicable to them: justice as studied in their works is the outcome of an infinite regress of interrelated judgements. There are, therefore, no clear limits to legality in the philosophies of Kant and Lyotard. Thus Derrida addresses them together: "The reading I will now give is directed at two targets". The first target is Lyotard on judgement. The second target is Kant's theory of the moral law: "the moral law and the respect of law in the Kantian doctrine of practical reason".

Although Derrida's only explicit link between Kant and Lyotard is in "Fréjugés. Devant la loi". That link, and Nancy's remarks in "Lapsus Judicii", allow me to use Derrida's criticisms of Kant in his essay "Parergon" from La vérité en peinture as pertinent to my analysis of the distinction made by Lyotard between the judgement of tribunals and adjudication. Derrida's work on Kafka and his other works on Kant will be considered in chapters V and VI of this thesis where the topics they concentrate on - the infinite regress of judgement and the sublime in Kant - will be studied in greater detail.

In his essay "Parergon", Jacques Derrida investigates the various categories and limits Kant uses in the classification and definition of aesthetic judgement in the Third Critique. He attempts to demonstrate the dependency of the particular examples and rules defining given categories on categories other than the ones they define. Such extraneous involvement of the attributes and paradigms defining the inside and outside of a category will, in Derrida's argument, prove that all categories are interrelated and that precise limits separating them cannot be given. For example, if Kant's definition of the category of fine art is achieved through exemplary works of art given as paradigms, and if those paradigms cannot be defined accurately, then the category of fine art will itself be ill-defined. Derrida studies the plastic (frames,

columns, hanging, etc...) and intensional (artist's signature, meaning, subject matter, etc...) surrounds of paradigmatic works of art in order to show how those limits do not belong to the same category as the work. For instance, the frame of a painting can belong to the category of decoration whilst the painting as a whole, including the frame, is said to present the paradigm of a work of fine art. Furthermore, Derrida demonstrates the dependency of works of art on their frames, without which the works cannot be accurately defined.

Thus, because the frames of a work of art can be said to be both inside and outside the work (this is the definition of a parergon), and because frames belong to aesthetic categories other than those of the works they delimit, paradigmatic works do not accurately define aesthetic categories. Derrida generalises this point by extending his argument from paradigmatic examples to all definition of limits. Any aesthetic category, he claims, must set limits or frames to the works belonging to it; however, the frames themselves will not belong to the category because they are the limits of the works from that category. Therefore, the definition of an aesthetic category is always dependent on limits neither intrinsic nor extrinsic to it. For that reason, all aesthetic categories are interrelated by definition:

Perhaps all discourse on painting is destined to reproduce the limit constituting it. Whatever is said or done, there will always be, for such discourse, an inside and an outside to the work. A series of oppositions then comes from the work, and the series need not be primary (it belongs to a system the border of which mirrors the initial problem) ⁸⁷.

At stake in Derrida's analysis of frames and parerga is the possibility of accurate categorical judgement. When judgement determines a category, can the limit between the inside and the outside of the category be drawn accurately?

Derrida notes the importance of limits of interiority and exteriority for Kant's analytic of aesthetic judgement:

The analytic of aesthetic judgement permanently depends on the possibility of a rigorous distinction between the intrinsic and the extrinsic. Properly, aesthetic judgement must apply to intrinsic beauty and not to surrounds and borders. One must therefore know - fundamental presupposition of the fundamental - how to determine the intrinsic - the framed -

and one must also know what is excluded as frame and as outside the frame⁸⁸.

The possibility of aesthetic judgement depends upon the exact definition of two types of pleasure: interested and disinterested. Through the maxim of the beautiful given as "purposiveness without purpose" these types define two categories of objects: the beautiful and the non-beautiful. If those categories cannot be separated accurately, if the limit between the inside and the outside of the category of the beautiful cannot be defined exactly, then the distinction and maxim upon which Kant's analytic of aesthetic judgement rests must fail in the definition of aesthetic judgement independent of other forms of judgement (analytic judgement and synthetic judgement). Kant's critique of judgement depends on the accurate definition of a category. I will now show that Lyotard's philosophy of différends sheds a similar burden on the definition of two types of judgement.

As seen earlier in the chapter, in my studies of Alain Badiou and Jean-Luc Nancy, Lyotard's philosophy of différends is based on a distinction between the judgement of tribunals and adjudication in the recognition of différends. The definition of adjudication, and the definition of the différend itself, depend on a negative definition with respect to the judgement of tribunals.

Therefore, the accurate definition of those cases lying inside the equitable jurisdiction of the judgement of tribunals is essential to Lyotard's philosophy of différends. So, like Kant, Lyotard must accurately define a category for his theory of judgement to stand up. It is now possible for me to investigate the transferral of Derrida's study of frames and limits onto Lyotard's categories of judgement.

In order to demonstrate the inexact nature of the limits of the categories used by Kant in his definition of aesthetic judgement, Derrida applies a principle I deduced above: if examples belonging to a category do not have exact limits or if the rules for the definition of those limits are not definitive and comprehensive, then the category cannot have been accurately defined. Given the parallels between Kant and Lyotard's studies of judgement, and given their mutual dependence on the exact definition of categories, the same principle can be applied to Lyotard's work. Once the premisses of the principle have been shown to be satisfied there will be sufficient evidence to demonstrate the failure of Lyotard's philosophy of différends as it is presented through legal metaphors in a theory of judgement⁸⁹.

From prior work in this chapter, I can deduce the satisfaction of both premisses to Derrida's principle

applied to Lyotard's legal presentation of différends. In my study of Lyotard's definition of the judgement of tribunals I noted his dependence on all ill-defined, even false example. Faurisson's arguments as to the non-existence of gas-chambers used in the holocaust. In addition to the Faurisson paradigm, Alain Badiou has demonstrated the arbitrary and inexact nature of Lyotard's definition of the justice of tribunals. If Badiou's work - extended in this thesis - and the Faurisson example are taken into account, then the first premiss to Derrida's principle is satisfied: the examples belonging to the category of the judgement of tribunals are ill-defined and arbitrary. When Jean-Luc Nancy's theoretical study of the relationship between forms of judgement in Lyotard's work is added to this first premiss, I further note the satisfaction of Derrida's second premiss: the rules governing the definition of Lyotard's categories of judgement are neither definitive nor comprehensive because the distinction drawn between the judgement of tribunals and adjudication cannot be set accurately.

Thus, it is possible to follow Jacques Derrida's work on Kant and conclude that Lyotard's legal presentation of différends is unsuccessful because adequate definitions of the categories on which the theory depends are not given. Lyotard's work relies on the drawing of a distinction between the judgement of tribunals and adjudication

(judgement capable of recognising différends). Without this distinction the definition of key terms, such as the différend and tort fails insofar as they are given as excluded from the possibility of equitable judgement by a tribunal ⁹⁰. Throughout this chapter I have demonstrated the arbitrary and inexact nature of the border separating the judgement of tribunals and adjudication. Lyotard's definition of the différend in legal terms must therefore also be inexact and arbitrary given his determination to use the différend in the description of absolute cases: différends are cases that can never be equitably resolved. I conclude that the legal presentation of différends is a failure because it cannot underpin Lyotard's absolute claims.

Conclusion

This chapter began with the question enquiring as to whether Lyotard's use of legal examples and types had the same effect on his philosophy of language as his appeal to unjustified affects investigated in Chapter II. In that chapter, I observed the influence of affectual conjecture and sentimental beliefs on a philosophy making necessary claims such as the claim as to the irresolvable nature of différends. I concluded that in order to justify the statement of the irresolvability of différends essential to Lyotard's philosophy in Le différend, the foundation to the philosophy had to go beyond conjecture and unjustified belief. In this chapter, I have undertaken a similar investigation of Lyotard's legal presentation of différends, so as to ascertain whether such a presentation can provide the required foundation to Lyotard's apodictic statements in his philosophy of judgement.

Following Alain Badiou, Jean-Luc Nancy and Jacques Derrida, I have demonstrated how the legal tropes and examples used by Lyotard - in particular, the use of negative definition in opposition to terms from French jurisprudence and the use of the Faurisson case - do not allow him to accurately define différends, tort and victims, the key terms in his philosophy of judgement. The

accurate definition of those terms is essential to Lyotard's philosophy, because it is through them that a form of judgement sensitive to différends can be introduced and grounded. I have further shown how the two categories of judgement at the base of Lyotard's theory, the judgement of tribunals and adjudication, the judgement sensitive to différends, cannot be properly defined if the terms différends, tort, etc., and the examples belonging to those categories are not themselves accurately defined. That definition is lacking in Le différend since I have demonstrated the inaccurate and arbitrary nature of Lyotard's definitions and examples. The categories at the foundation of the philosophy of judgement are therefore inadequate because they too cannot provide the basis for the claim that différends can never be resolved.

To conclude this chapter, I find Lyotard's use of legal tropes in the presentation of his philosophy pedagogically successful - the context and issues of the philosophy are summarised in a widely accessible form: the application of legal justice to difficult cases. However, the presentation can play no part in grounding the apodictic claims of Lyotard's philosophy. What is at stake is whether the philosophy proposed in Le différend is merely conjectural, or whether Lyotard has proven that certain cases (différends) can never be judged equitably by any court of law. In chapter IV, I will study the

possibility of grounding Lyotard's definition of a différend in his philosophy of language alone, thereby providing the status of apodicticity to that definition.

Chapter IV - Philosophy of language in Le différend

Introduction

In this chapter I will explain and criticise Lyotard's concept of a différend by researching and completing the philosophy of language he advances as the ground for heterogenous régimes of sentences, the cause of différends in discourse.

A chapter on Lyotard's philosophy of language, considered as consistent and complete, is essential to my study of Le différend for two reasons:

- 1) Lyotard's philosophy of language, in particular his investigation of the role of narrative in the description of events, is essential to any explanation of his claim that events are never completely described - in science or in narrative. The idea of the heterogeneity of events and descriptions in Le différend must be explained from the point of view of Lyotard's philosophy of language.

- 2) The philosophy of language not only explains but also grounds the possibility of a necessary heterogeneity between linguistic descriptions and the events they describe. In Le différend, a philosophy of language underpins and justifies the necessary possibility of the simultaneous existence of heterogenous, yet equally valid, descriptions of a same event.

The two reasons given above are the expression of my conclusions to chapters II and III of this thesis in a manner appropriate to the study of Lyotard's philosophy of language. In conclusion to chapter III, I found Lyotard's legal presentation of the différend to be insufficient in proving the main premise to his argument on just judgement: différends are conflicts, between two or more parties, that can never be equitably resolved before any tribunal. In this chapter, I will demonstrate how Lyotard attempts to express, and prove the irresolvable nature of différends through an appeal to a philosophy of language. I will show how différends become discursive problems based on the existence of heterogenous descriptions and reactions to a same event. Furthermore, the heterogeneity of the linguistic entities Lyotard calls régimes and genres, will be shown to be dependent on the necessary heterogeneity of events and the descriptions that follow them.

The first consequence of studying Le différend in the light of my conclusions to chapter III is a diversion from the usual status of philosophies of language in Lyotard's work. If I am to study the philosophy of language in Le différend as the ground to statements that cannot be defended elsewhere in the book, then that philosophy must be taken as consistent and complete; in works prior to Le différend, this has not been the case. In La condition postmoderne, Des dispositifs pulsionnels, Dérive à partir de Marx et Freud and Rudiments païens, Lyotard used linguistic theories taken from his earlier books Discours, figure and Economie libidinale to illustrate and analyse specific events and their narrative context. Events such as the murder of a "demonstrator", Pierre Overney ⁹¹, outside a Renault factory, and the torture and trial of members of the Red Army Faction ⁹² were explained in terms of a mechanics of narrative and the flux of a libidinal economy. More general ideas were also explained through the appeal to a linguistic theory; for example, the emergence of a postmodern society was understood in terms of Wittgensteinian language games applied to the context of modern grand narratives ⁹³. The status of the theories used by Lyotard in these analyses was descriptive or explanatory. They described and explained the relationship of event and narrative and, in this

sense, they served as models, accurate (or inaccurate) representations of a state of affairs to which they could not be reduced.

In Le différend, and its accompanying essays⁹⁴, the explanatory or interpretative status of theory is supplanted. The linguistic theory no longer models a state of affairs; instead, a philosophy of language grounds necessary laws ruling the occurrence and, hence, our understanding of linguistic events (I will show that for Lyotard all events are linguistic in the course of the chapter). Thus, a linguistic model is not applied to events independent of it, but rather, events are understood as linguistic entities obeying the laws of a philosophy of language. When Lyotard identifies the linguistic model and the event, the former is no longer an empirical hypothesis in need of pragmatic verification, but is instead the ground for all a priori conditions of the occurrence and interpretation of events⁹⁵. It is with this status that the philosophy of language in Le différend can justify the statement that différends can never be resolved. Note, however, that the definition of the différend as a legal conflict (or extra-legal, to be precise) must be translated into the terminology of the philosophy of language before I can claim the validity of linguistic laws for the legal

presentation. In this chapter, I will criticise Lyotard's deduction of a priori laws from a philosophy of language; in the next chapter, I will study the translation and interface between that philosophy and the legal presentation of différends as studied in chapter III.

Remark - Lyotard's philosophy of language in Le différend must be reconstituted by the reader.

Prior to my study of the philosophy of language in Le différend, I must make an important point concerning the nature of the work required for the systematic criticism of that philosophy.

In Lyotard's oeuvre the role of linguistic analysis ranges from an explanatory function, through the modelling of a state of affairs, to a foundational function, through a critical enquiry into the necessary conditions for the occurrence of events. Those varied roles can be recognised through the use to which Lyotard puts the linguistic theories, and through the overt claims he makes as to the status of those theories as necessary condition, as observation, as model, as report, etc...⁹⁶. However, the function fulfilled by the linguistic theory does not entail a particular presentation of the theory itself. In Lyotard's work the function of a theory does not effect its

presentation. Thus, it does not follow from the claim that a philosophy of language gives the necessary conditions for knowledge in a given field, that the philosophy is presented in full as a consistent and complete theory in Lyotard's books. Lyotard's work omits the presentation of the theory behind many of the theoretical claims made in his philosophy. From such omissions commentators have branded him as a "second-rate philosopher" or not a philosopher at all. The point of this chapter is to reconstitute Lyotard's theory prior to making or rescinding such damning judgements.

To condemn Lyotard's philosophy before attempting to reconstitute or uncover the theoretical work on which it is based is to ignore the following consideration. Lyotard purposely omits the full exposition of the theories he employs. From Economie libidinale, Au Juste, La condition postmoderne⁹⁷, right up to Le différend, Lyotard has criticized the methods through which philosophy is justified and also the convention dictating that self-justification must be provided in full in a philosopher's work. Contrary to this practice, Lyotard takes the presentation of justification as secondary and subservient to the rules of rhetoric. Therefore, he does not seek, in his own work, to provide consistent and complete accounts of his theories. Instead, theory is used and presented in practical situations where justification and demonstration

are dependent on narrative and rhetorical exposition⁹⁸. Much of the theory employed in Lyotard's work remains concealed.

However, the omission of a consistent theoretical analysis from Lyotard's texts does not imply that such an analysis has not been undertaken in the preparation of those texts. An ignorance of this point leads directly to two mistakes in the critical appraisal of the work. The first mistake is to deduce from the lack of theoretical analysis in Lyotard's books that he is opposed to theory and, consequently, that his claims do not have a "solid" theoretical ground. The second mistake is to take the theory included in the texts as the sum total of their theoretical background and thereby, to abandon any attempt at the reconstitution of the whole theory implied by, and alluded to through Lyotard's claims⁹⁹. Given the importance of Lyotard's philosophy of language to his work in Le différend, as I have studied it in chapters II and III of this thesis, I will take care not to make these mistakes.

In the light of the above considerations, my study of Lyotard's philosophy of language goes beyond a purely exegetical reading of Le différend¹⁰⁰. I attempt to reconstitute a consistent and complete theory from the disparate notes in the book. In so doing I hope to achieve

a proper analysis of Lyotard's claims concerning the necessary possibility of heterogeneity as grounded in the philosophy of language. Note also, that this approach allows a clearer explanation of the elements of the philosophy presented in fragments in Le différend. Finally, I must take account of the inherent problems involved in a study going beyond exegesis. In reconstituting Lyotard's theory I am in danger of prejudicing the analysis of any work based on it, by altering the theory mistakenly. I will, therefore, take care to emphasize the points where I add to, or recombine Lyotard's stated work.

Hollow links, names as rigid designators

From my analysis in the preceding chapters I conclude that in Lyotard's work différends depend upon a notion of evidence independent of the possibility of universal recognition. A différend arises when it is impossible for a tribunal or another judging instance to recognise a wrong suffered by a party in a conflict. Thus, the very possibility of différends must turn on a theory of evidence allowing for real events that cannot be made evident universally - this is the expression of Lyotard's distinction between tribunals, incapable of recognising différends, and adjudication, the form of judgement sensitive to the wrongs suffered by the parties involved in

such a conflict. For différends to be possible, reality must be defined independently of recognition given as universal; furthermore, that definition must disallow additional definitions of reality that may allow it to be recognised universally. If Lyotard is to be able to sustain différends in the prominent place they occupy in his work, he must elaborate a theory wherein reality is possible yet cannot be universally established. It is nonsensical for him to repudiate the notion of reality in general because this would weaken the status of différends themselves; the notion of a différend is itself dependent on the possibility of genuine or "real" wrongs suffered by victims of a given conflict (see chapter III).

With respect to reality, Lyotard's projected philosophy of language seeks to validate a philosophy based on différends; therefore, rather than create an all-encompassing metaphysics, he approaches the problem of reality negatively. That is, Lyotard first seeks to disprove theories excluding the possibility of différends and then works on his own philosophy to avoid that exclusion. He identifies two approaches to reality that render his position with regard to différends untenable, both make claims as to the possibility of the universal recognition of reality.

The first approach tackles the problem of reality from the point of view of presentation. Reality is associated with presentation and an object's reality depends on whether or not it can be shown. In this approach the wrongs suffered by victims of a différend will be associated to ostensible objects or loci, if either of these can be shown then the wrong will be taken as real. However, in this view, the différend will be dispelled if the act of presentation or showing is taken to be universal; because, if that is the case, then a single tribunal will be able to recognise the arguments on all sides of the différend, thereby contravening the legal definition of the term (see chapter III). The second approach to reality depends on the possibility of the cognitive representation of objects. If an object can be represented, cognitively described - defined according to a set of cognitive rules and concepts -, then it can be real; if such a definition is lacking then an object cannot be real. In representation, a cognitive definition is the pre-requisite for the reality of an object (Note that Lyotard takes the strongest approach to reality to be the combination of the two given above: the cognitive definition of an object together with its ostension).

Neither presentation nor representation necessarily exclude the possibility of différends. This only happens if either ostension or cognitive definition are given as

potentially universal. Only then does the différend, defined as a conflict wherein all the wrongs suffered by the parties in dispute cannot be recognised by a single tribunal, cease to make sense. Therefore, Lyotard develops a theory of reality, based on proper names in the context of a philosophy of language, where universal cognitive definition and universal ostension are not possible.

For Lyotard, différends stand outside the dichotomy of: either universal presentation and representation, or, no real events; he seeks to demonstrate this through his theory of names - for example, in the case of Auschwitz:

In this sense Auschwitz is the most real of realities. Its name marks the limits to the extent of historical verification. It does not follow, though, that we thereby become involved in nonsense. The alternatives are not: either, scientifically established signification, or, absurdity (even mystical absurdity) ¹⁰¹.

The event of Auschwitz can be shown to escape inclusion in a universal cognitive discourse and to be outside the possibility of universal presentation, by remaining ineffable in universal discourse and by exceeding all forms of presentation:

A name [Auschwitz] that would designate the speculatively unnameable, an anonymous name. And, for speculation [in the sense of Hegelian speculative reason] the absolutely anonymous [...]. The name would remain empty, in a mechanical memory, devoid of all concepts ¹⁰².

(It is here that we note the importance of the linguistic study of Lyotard's affectual concern for Auschwitz as studied in chapter II of this thesis).

Thus, universal cognitive discourse and universal ostensibility are separated from Lyotard's definition of reality. To this purpose, he develops a theory based on names, because naming functions as a common factor shared by cognitive concepts, phenomenological objects and the establishment of the reality of things. Names will be defined as rigid designators ¹⁰³ joining naming, ostension and cognition to formulate a definition of reality whereby différends will neither be cognitive absurdities nor marginal to the discourse of speculative reason:

I answer to all realism that nobody can see "reality" as such. This would suppose that it had a proper name, and one cannot see a proper name. To name is not to show ¹⁰⁴.

Starting with the example of phenomenology, Lyotard argues that in philosophies dependent on phenomenological study ¹⁰⁵, the determination of the reality of an object relies on a privileging of the role of ostension. Reality is decided in the action of showing, ostension:

A sensible impression is, as Kant writes, "linked to an object" called the phenomenon. The referential function that is thereby used belongs to a subject's capacity - active capacity - to show the time and place of the thing whose matter causes the effect or sensible impression [...]. This is what we call an ostensive capacity ¹⁰⁶ [...].

There are two components to ostension, these establish a relation between an indicating subject and an indicating thing, the referent. The first component fixes the subject in a present time, and is the spatio-temporal origin to which the object is related, Lyotard calls this origin the "I-here-now" component of ostension as in: "I (I-here-now) show you this". The second component of ostention is a deictic, that is the linguistic term directly relating the spatio-temporal origin to the shown object. In an ostensive sentence the deictics are the words 'this', 'that', etc, ..., they are the index finger, indexicals, of the act of ostension ¹⁰⁷. Once a spatio-temporal origin is related to an

object through a deictic, the reality of the shown object is said to have been established:

Deictics relate the instances of the sentence to which they belong to an "actual" spatio-temporal origin, also called the "I-here-now". Those deictics are designators of reality. They designate their object through a linguistic permanence and as a "given" thing ¹⁰⁸.

It is in the acquisition of permanence that Lyotard detects a flaw in the privileging of ostension with regard to the definition of reality; this is because a spatio-temporal origin linked to an object through deictics is not a permanent act. On the contrary, ostension only lasts as long as the act accomplishing the showing of the object, as long as the presented object is linked to the original "I-here-now" through the sentence "I show you this":

However, that "origin", far from being permanent, is presented or co-presented with the universe of the sentence mentioning the two of them. The origin appears and disappears with that universe and, therefore, with that sentence ¹⁰⁹.

The act displaying a referent as "given" does not guarantee its permanent reality. Deictics must be independent of a spatio-temporal origin so that their

referent may be referred to independent of a particular act of ostension; only if this is possible will the object's reality become permanent. According to Lyotard, in order to achieve reference without ostension we must use names; these allow reference to an object as a possible reality that can be subsequently checked through ostension. When an object is named it can be referred to independent of ostension: "I show you this" can become "the pink elephant I showed you last night".

When used in ostension-less reference names are quasi-deictics, conditioned deictics that refer to an object given certain conditions. These conditions are central to Lyotard's analysis, he contends that names must refer to their referent rigidly, that is, without confusion or contradiction with other objects designated by different names. For this to be possible, for names to designate rigidly, they must be situated among others according to rules that ensure the non-occurrence of contradictions or confusions - at least within limited areas; for Lyotard, these rules are the equivalent of cognitive definitions:

The plasticity (of a proper name) is obviously limited by the one or more worlds the name belongs to, and also by the position it is given among other names according to spatial, temporal and anthroponymic relationships that also have

names (kilometers, ..., generations). [...] Still, within those limits, a grid of indeterminate meanings can be associated to a name without altering its designation ¹¹⁰.

Rigid designations, rendered possible by cognitive networks such as maps, genealogies, calendars and dictionaries, position names fixedly into a grid of cognitive functions or interrelationships so that designated objects become related in a possible world mirroring its corresponding network. The reality of an object in a possible world can be checked through ostension. So, although names fix an object within a network of other names, they do not guarantee the reality of their referent unless accompanied by ostension:

A name designates "fixedly" through sentential universes and is inscribed in networks of names allowing reality to be plotted; but, a name does not make its referent real.

[My emphasis] ¹¹¹

To position a name within a network of other names is to associate it to a set (of indeterminable cardinal number) of cognitive sentences linking the name to a particular cognitive sense. It will be shown, later (in the sections on sentences and régimes), that Lyotard groups

sentences into various heterogenous régimes, each one defining a possible world. Names straddle that heterogeneity insofar as they can refer a same object to heterogenous senses:

[...] a name can be placed in all instances of sentential universes and in the most heterogenous régimes without altering its designating value (this is its rigidity) ¹¹².

Thus, a name bridges the gap between a variety of cognitive sentences (senses) and the object in an ostensive sentence, the referent. For names to fulfil that function they must be transferrable from one sentence to another without altering the sense of the sentence or the name's referent; this transfer is only possible if names are devoid of sense for, otherwise, they would bring additional cognitive factors to the sentences they fit into, and their designative function could alter as the sense of the name changed with its various cognitive contexts. Names must be hollow links between a referent and a set of heterogenous senses. Therefore, an object can only be taken as real if it is named, shown and cognitively defined; this is because the name as rigid designator has no intrinsic sense and cannot alone ensure that an object is a permanent reality. In order to establish the permanent reality of an object, meaning, sense and reference must be joined in one act

where the name fulfils the role of hinge between various senses and one referent - for example, "this is an elephant"; here is how Lyotard puts the point:

The name fulfils the role of hinge because it is an empty and constant designator. Its deicticity is independent of the sentence in which the name stands at any given time, and it can take many semantic values because the only ones that cannot be taken are those incompatible with the name's position in the networks of names ¹¹³.

A statement of reality must use at least one name. It is through the name, the hollow link, that I at the moment t and I at the moment t₁ can be linked with another and with the here I am (ostension). The possibility of reality, including the reality of the subject, is fixed in networks of names "before" reality is shown and signified in an experience ¹¹⁴.

Names must be associated with senses before these are united with an object in an experience, because the experience of an object as real depends on the prior association of a sense and a name. Also, names - unlike Kantian schemata - do not operate in an exclusively cognitive role, as a priori conditions for cognition, but

are dependent on objects in their function as rigid designators. Hence, both the referent and cognitive senses of names have to be learnt, that is, positioned according to other names and their referents, following varying sets of cognitive rules within different networks. Lyotard uses the above observations to make the following deduction. Given that names cannot be set independently of a sense but are dependent on the cognitive sentences they are used with, and given that names operate as hinges between a shown object and those sentences, if we accept that there is a multiplicity of possible heterogenous régimes of sentences that can be associated with a particular name, then it follows that we cannot determine a priori which senses correspond to a given referent. Furthermore, if we allow new régimes of sentences to be formed and aligned to a particular name, it follows that the number of senses that can be attached to the name's referent becomes unlimited (if we accept that the number of possible régimes is itself unlimited).

Lyotard's argument is that the cognitive definitions associated to a given referent are contingent because the name referring to the referent fits contingently in a multiplicity of different cognitive sentences. The outcome of this argument is to render contingent the establishment of the reality of an object contingent as it varies with the cognitive senses associated to the object's name. An

object's reality becomes potentially related to an endless series of heterogenous senses, because the establishment of reality depends on the concurrence of ostension, naming and meaning, and because the relation between naming and meaning cannot be restricted - a priori or a posteriori. The verification of the reality of an object (ostension) associated with a given cognitive sense through the hinge of a rigid designator (name) can establish reality for a multiplicity of particular sense linked to that name. Therefore, a multiplicity of contradictory and heterogenous cognitive senses can legitimately fit the name of a single real object:

One cannot prove that everything has been signified of a name (that "everything is said of x"), not only because no "everything" can be proven, but also because a name alone is not a designator of reality (there must also be an associated sense and an ostensible referent). The number of senses that can be attached to a name is not limited by the "real" properties of its referent ¹¹⁵.

The referent of a proper name (Bonaparte, Auschwitz) is both strongly determined as to its plotting in a network of names and relations of names, and weakly determined as to its sense -

due to the great number of heterogenous sentential universes into which the name can fit 116.

Lyotard is now in a position to state the relationship between the study of reality in his philosophy of language and his legal or conflictual definition of the différend. Once it has been demonstrated that the reality of a same named referent can be established for a plurality of heterogenous cognitive senses, Lyotard claims that the establishment of reality cannot provide universal norms for the judgement of various cognitive senses. This is because heterogenous senses can be legitimately associated to the same real object through the rigid designator essential to the persistence of its reality: the name given to the object. Hence, it is in the nature of the establishment of reality to lead to différends. The different parties in a dispute can make heterogenous cognitive statements about a same real object and the appeal to reality cannot divide correct statements from erroneous ones: as Lyotard puts it: "Reality implies différends" (La réalité comporte le différend"). This is a very important claim in Lyotard's theory, it is the theoretical basis and justification of irresolvable conflicts - at least through an appeal to reality; he states the point more dramatically as: "Vengeance stalks close by names" ("autour des noms la vengeance rôde"). In the case of Auschwitz this implies

that the wrong suffered there can never be shown to be real to every person's satisfaction:

The reality of the tort suffered at Auschwitz [...] remained, and remains to be shown; and this cannot be achieved because tort cannot be established by consensus ¹¹⁷.

Lyotard's statement of the relation between reality, defined in his philosophy of language, and différends leads me to two different types of criticisms. The first criticism involves a further questioning of the conditions necessary for Lyotard's theory of names to definitively problematise the appeal to reality. That is, I question up to now unsubstantiated claims such as: that the number of genres and régimes is, in principle, without limit and, that names "fit" into cognitive networks or sentential universes. Without answering those queries the philosophy of language in Le différend will be incomplete; I will, therefore, attempt this further study of Lyotard's work in the following sections of this chapter.

The second criticism I make of Lyotard's work on rigid designators is that it does not take sufficient account of the history and complexity of the implied debates in the philosophy of logic entailed by an analysis of the relationship between language and reality. Lyotard has

sketched, rather than defended, one possible account of how sense relates to names in turn referring to real objects. He has not entered the logical debates that started with Frege and continued with Russell, Strawson, Wittgenstein, Kripke, Quine and countless other philosophers of logic. Furthermore, in no way can Lyotard's very sparse notes, that I have here collected into a coherent theory, be compared to the detailed and scrupulous studies given by the philosophers listed above. Yet, Lyotard has presented a theory particular to himself - rather than adopt the work of Kripke, itself very close to Lyotard's definition of rigid designators - on which he bases for reaching and important statements for his philosophy of judgement¹¹⁸. What then are we to make of those statements?

There are two possible reactions to the above question. One could make a detailed critique of the bare theory presented by Lyotard in the light of the history of the logical debate into which his definition of rigid designators must fit. Or, one could take Lyotard's work in the philosophy of language as a sketch offering a possible account of the relation between language and reality, and continue to study the philosophy in Le différend as an amalgam of diverse approaches to différends, not totally dependent on a patently unsatisfactory treatment of names defined as rigid designators.

I take the second option because it is the most fruitful approach with respect to the points I have already investigated in this thesis. From chapters II and III it has transpired that Lyotard's philosophy depends on a series of disparate presentations of a central topic. He gives an affectual, a legal and a linguistic treatment of différends: I am interested in the problems related to the juxtaposition of those varied accounts of a common subject and will therefore pursue my study of Lyotard's philosophy of language despite the flaws it presents when considered as a coherent logical theory. This decision does not, however, stop me from drawing the conclusion that Lyotard's theory of rigid designators cannot provide the basis for necessary statements concerning either the syntactic or semantic nature of language, or the relationship of reality to language: his theory is put too sparsely and without consideration of counter arguments to stand as coherent and well-founded ¹¹⁹.

Indubitable sentences

In the preceding section I have shown that Lyotard gives a definition of reality wherein the function of ostension, naming and meaning introduces the possibility of diverse cognitive senses being associated to a same real object. Defined in this way, reality does not exclude

différends; on the contrary, it grounds them in the nature of language. However, for Lyotard's linguistic theory to serve as a satisfactory foundation for his analysis of différends, two presuppositions that are made in his work on naming must be investigated.

The presuppositions are: firstly, that names can be associated with a cognitive sense - Lyotard must demonstrate how the sense is attributed to a name and how it then fits into a multiplicity of different sentential régimes; secondly, that the number of heterogenous régimes including a particular name and referent is, in principle, unlimited. This section on Lyotard's definition of sentences will study the first of these points in order to show how names are associated with a sense through the use of a sentence. Then, how that sense is allowed to alter indefinitely according to the concatenation of sentences in forming régimes. The concatenation of sentences is their linking into chains or sequences.

Although the second presupposition stated above is essential to the expression of différends in language, it will be left to the next chapter on the concepts of situation and presentation; this is because it depends upon a complex analysis of time and occurrence requiring a more developed study. It is important though, to recall that without a solution to the problem of heterogeneity

Lyotard's work on sentences can only offer a partial basis to the existence of différends. If such a solution is lacking, a multiplicity of senses and sentential régimes can potentially be included in a meta-language that sublates heterogeneity into a single discourse, thereby eradicating différends.

Lyotard's theory of sentences allows a plurality of different sentences to be associated with a name and referent according to three structures; these are:

- 1) A general discursive structure explaining the link between discourse and specific linguistic terms such as names, sentences, régimes and genres.
- 2) A structure determining the relation of name to sentence.
- 3) And a structure determining the concatenation of sentences.

(Lyotard's definition of discourse and sentences will emerge as I develop the three points). The structures give definitions for discourse, sentences and concatenation and set down the rules for the inclusion of names into sentences and sentences into chains of sentences. The definitions and rules aim to account for the possibility of

sense through the medium of names and sentences, without having to limit the number of senses associated to any given name. That is, a name and a sense are necessarily associated following Lyotard's structures, but these must allow the sense and name relationship in general to remain indeterminate. Furthermore, the structure must not provide rules or definitions that forbid the association of heterogenous senses with the same name, because this would negate Lyotard's establishment of the possibility of différends based on names defined as rigid (empty) designators.

The first structure used by Lyotard is a general discursive one, explaining how sentences follow one another or concatenate according to a discursive model. The model has four components: a referent, an addresser, an addressee and a sense. The addresser has to demonstrate to the addressee that a sense belongs to a referent. In Le différend, Lyotard restricts the model to instances of dialogue where the interlocutors are in dispute. Therefore, the terms "addresser" and "addressee" must be understood in both their legal and postal meanings: the addresser sends a message in order to redress a wrong; the addressee receives that message aware that it seeks to give a new sense to a name and referent:

To simplify, one could say that a sentence presents its object - the case, ta pragmata -, what it has to say - der Sinn -, the thing to which it is destined, and the thing instituting the sense; the referent, the sense, the addressee and the addresser. The setting up of a sentential universe involves a situation of those instances according to one another. A sentence can have several referents, senses, addressees and addressers. Each one of which can, but need not be mentioned in the sentence ¹²⁰.

Lyotard presents sentences as if ("comme si") they are the medium for a debate between an addresser and an addressee. Sentences are used by an addresser to associate a referent with a specific cognitive network, a sense, so that the addressee of the sentence recognises the association of that sense and referent as legitimate. In a différend, the plaintiff is the addresser and the tribunal is the addressee; the plaintiff must demonstrate that the wrong he suffers from is real, to do this he must first associate the wrong to a sense through the use of sentences referring to the wrong and conveying the sense:

The person saying something is the plaintiff, he must prove what is said through the use of well-formed sentences and procedures for the

establishment of the reality of their referent.
Reality is always the onus of the plaintiff¹²¹.

[My emphasis]

Two important points must be retained from this "simple" model of sentences in a discursive context. First, the model does not explain how a sense is given to a referent in the sentence itself, rather than in the general context of a debate or argument. Second, a sentence can be used in many different discursive contexts, the model does not explain what in the sentence allows it to be associated to any particular context. The discursive context in sentences must be supplemented by an account of how names, sense and referents fit into sentences, and how sentences concatenate to form debates. The concept of the debate is therefore an analogy illustrating the concatenation of sentences. The analogy does not advance the study of the foundation of différends in the philosophy of language, because it returns the form of study to the topic of legal argumentation which is the very area Lyotard must ground in his theory of sentential concatenation.

Lyotard must demonstrate that the medium for dialogue necessarily implies the failure of any attempt to secure a universally ascertainable form of reality. The performative aspect of discourse comes second to an analysis of the

vehicle for dialogue - the sentences that concatenate to form a dialogue and its context:

To do justice to différends is to introduce new addressees, new senses, new referents, so that the tort is expressed and the plaintiff ceases being a victim. This requires new rules for the formulation and concatenation of sentences ¹²².

[My emphasis]

The analogy drawn between the form of legal debate and the form of the concatenation of sentences cannot serve as a demonstration of the contingent nature of the association of sense and referents in sentences ¹²³.

It is, however, important to note that the analogy drawn between the pragmatic structure of dialogue and the semantic structure of the concatenation of sentences is repeated throughout Le différend. Legal analogies are used in the explanation of the play between Kantian faculties in presentation and representation, and in the illustration of the mechanics of literary paragraphing in Gertrude Stein's theoretical work on writing. Both Kant's critical philosophy and Gertrude Stein's theory of avant-garde writing constitute important examples in Lyotard's book; they are present in the long philosophical notes in Le

différend due to their roles in forming the philosophical and literary background to his work.

For Lyotard, Kantian presentation (Darstellung) involves a play of the "faculties" of intuition, imagination and understanding as if ¹²⁴ those faculties make claims and counter-claims upon given objects in a court of law; presentation follows a series of legal representations and an analogy holds between the structure of legal disputation and the organisation of the interaction of faculties:

[...] the subject cannot have presentations but only representations; not only in the theatrical sense where representations stand for absent objects but, rather, in the juridical sense where "faculties" never cease to air grievances and remonstrate with one another. Faculties criticise each other through a confrontation of their respective evidence ¹²⁵.

Similarly, when reading Gertrude Stein's work on writing, Lyotard recalls that the word paragraph traces back etymologically to the Greek legal expressions paragramma, paragraphein and paragraphe: i.e.: an additional clause to a legal contract; the adding of a clause to a law; to make claims as to an exception to a

law. To paragraph or add a paragraph to a text is like adding a further point to a legal argument. There is an analogy between the interaction of paragraphs in a text and the arguments between the various parties in a legal dispute:

In French a paragraphe is a textual division (and/or sign). It separates that which it unites. This Greek word means that which is written besides. A paragramma is an additional clause to a law or contract. A paragraphe is an objection made by the defense to the admissibility of an indictment. Paragraphein is to add a clause, particularly in a fraudulent manner ¹²⁶.

Analogies based on legal discourse introduce ideas of judgement and justice to the name and sentence relationship. The first, discursive structure assigned to language illustrates the sentential context of names, and ensures that the legal aspect of différends is carried through to the definition of linguistic terms:

To paragraph is to write And, And besides, And still [...]. The différend is introduced again in the heart of that which must judge litigation, between the law and the case up for judgement ¹²⁷.

For Lyotard, paragraphs need not only be textual divisions marking changes in ideas, topics and argumentation; they can be the indices of a form of debate interior to the text. Yet, he aims to establish far more than just a parallel between language and the différend presented through legal tropes. The possibility of différends, irresolvable conflicts before the law, must be grounded in language, and the contingency achieved through his theory of names as rigid designators must be maintained in a theory of sentences, not analogically, but as an intrinsic property of linguistic semantics. The legal, discursive analogy can neither demonstrate the contingent aspect of the association of names with sense, nor ground the irresolvable nature of différends. Therefore, Lyotard develops a second linguistic structure, the structure determining the relation of sentence to name.

From his work on names and proper names, Lyotard concludes that names are rigid designators empty or devoid of sense; he completes that definition by adding that it is the inclusion of names into sentences that ascribes cognitive sense to them. A sense is associated with a name and its referent when the name is given in a sentence. In order to vindicate this statement, the definition of the sentence-name structure must be completed by a definition of sentences and an explanation of how names can be inscribed within networks of cognitive sense (see previous

section on rigid designators). The first of these tasks is particularly intricate because sentences must be defined without contradicting key terms introduced in the work on proper names. These terms are the indeterminacy of sense and the uncertainty of reality prior to the insertion of names into sentences.

Given that the key terms (above) are essential to Lyotard's analysis of proper names and given that his theory of sentences must guarantee the indeterminacy of the association of names and sense, sentences must be defined independently of their sense and reality:

Neither the sense nor the reality of a sentence are indubitable. The sense is dependant on the concatenation with a further sentence explaining the former. The reality can only be asserted according to the rules for the establishment of reality that comprise a trial through doubt.

[My emphasis] 128

If these conditions are not respected, then Lyotard's argument becomes viciously circular; that which should follow on from the analysis of sentences would effectively underpin it. Sentences defining the nature of sentences and concatenation are themselves subject to their own sense:

[...] the sentence giving the general form of the operation of continuity from one sentence to another is itself subject to the form of that operation ¹²⁹.

Furthermore, due to the problems inherent in circular arguments, Lyotard cannot give a finite descriptive definition of sentences. Such an attempt would privilege the régime of descriptive sentences above all others; this would allow that régime to become foundational, thereby instituting a meta-language of dialogical descriptive definitions - that is, finite descriptive definitions given in a dialogical context - disallowing the heterogeneity of régimes upon which Lyotard's theory of différends depends:

[...] the substitution of a sentence as occurrence by a phrase type (or the object sentence) is required by a sentential régime, the definitional régime (the only terms that can thereby be introduced into discourse are those terms taken as objects from a meta-language and given definite descriptions), and a genre of discourse, the dialogical genre ¹³⁰.

The form of finite descriptive definitions alters and prejudices the form any new sentence can take and hence rules out the possibility of an unlimited number of heterogenous régimes of sentences. If a sentence belongs to

a régime of sentences heterogenous to the régime of finite descriptive sentences, then it cannot be given a finite descriptive definition without losing something of its particularity:

A sentence, taken as the object of a description (as the referent of a definitional sentence), is necessarily transformed because it must be the referent of another, definitional sentence from a meta-language ¹³¹.

Lyotard must therefore define sentences without presupposing prior definitions of the sense or reality of a sentence; furthermore, he must retain the indeterminacy of the sense and the uncertainty of the reality of any particular sentence. Not only must the definition of sentences avoid a cognitive or objective definition of sententiality, it must also avoid defining sentences according to their particular sense or reality. Sentences cannot be defined according to their meaning nor the type of objects they are. This is because each sentence can be the referent of another sentence and hence, any sentence can be a rigid designator - a name within a sentence; for example: "the sentence All cats sit on mats is a sentence" refers to the sentence "All cats sit on mats". For this reason, the particular sense of any given sentence is not

fixed, but must be allowed to alter in the same way as names defined as rigid designators.

So as not to contravene the preconditions for the definition of sentences listed above, Lyotard uses a version of the Cartesian method of doubt. He claims that the sentence "I doubt" exists independently of the proof of its reality, or any appeal to its sense, through its resistance to the text of universal doubt. In this he mimics the approach of the Cartesian cogito:

The thinking or reflexive "I" does not resist the test of universal doubt, instead, the sentence ["I doubt"], and time, fulfil this function ¹³².

Lyotard contends that we cannot doubt that in the act of doubting there is a sentence "I doubt" prior to, or as a condition of the doubting:

From the sentence I doubt it does not follow that I am but rather, it follows that there is a sentence ¹³³.

The existence of the sentence "I doubt" is indubitable. From this point Lyotard deduces the definition of sentences as those things the existence of which is indubitable, and he gives examples of further indubitable

sentences extrapolated from the original sentence. Also indubitable are the sentences: "there is a sentence", "What cannot be doubted?", "I", "doubt", "The sentence "There is a sentence"", "The sentence I follows the sentence "I doubt"" and so on ... (Note: he would also include the sentences comprising his own account and the sentence in this thesis).

Working from the Cartesian method of doubt, Lyotard gives a definition of sentences satisfying his conditions. A sentence is any thing the existence of which cannot be denied:

That which escapes all doubt is that there is at least one sentence: whatever form a sentence takes [...] is must be a thing ¹³⁴ .

Thus, Lyotard describes a sentence based ontology: a sentence is, "Toute phrase est". This definition is independent of the sense and reality of sentences, and he argues that it does not give a definite description of the object sentence. However, Is his definition not a cognitive definition? To say that a sentence is "that which is" is to make sense and thereby to offer a meta-linguistic cognitive definition. Lyotard answers this point by stating that, although his definition offers a cognitive definition, it

does not fix the cognitive sense of sentences or give a fixed, definite description of sentences.

The ontological definition of sentences allows them to be any thing that occurs. Furthermore, that ontological occurrence, the coming into being of sentences, is not limited by any conditions; anything can occur and there cannot be a priori constraints on the nature of occurring events:

In: Every sentence is, every sentence signifies: everything that occurs; is signifies: there is, it occurs. But, it occurs is not what occurs, in the sense where quod is not quid (where presentation is not situation). Therefore, is does not signify: is there, and even less: is real. Is signifies nothing, and designates occurrence "prior" to the signification (content) of the occurrence ¹³⁵.

In this definition of sentences, Lyotard does not claim a logical status for his philosophy of language; instead, he gives an ontological definition of sentences based on the "self-referential capacity of ordinary language", the fact that any sentence presupposes its own existence:

As for the meta-language at stake in "my" sentences here, it does not have a logical status, its function is not to fix the sense of a term. Instead, the function of the meta-language depends on the self-referential capacity of ordinary language ¹³⁶.

The use of an ontology based on the unconditioned occurrence of sentences ensures the possibility of unruly cases coming before tribunals in Lyotard's philosophy of différends. Once différends and judgement have been defined linguistically, the possibility of the occurrence of sentences heterogenous to all prior definitions and laws governing the sense and reality of sentences introduces a necessary insufficiency to judgements metered out by tribunals. However complete and scrupulously just a system of law may be, it will always be possible for cases to occur that cannot be judged equitably by the system. The ontological definition of sentences is a condition for the occurrence of différends because it guarantees that the outlaw can always occur - in the sense where the outlaw is a case not governed by laws already in practice.

Although the ontological definition of sentences allows for the occurrence of différends, it does not ground their necessary occurrence. It is possible for sentences to occur that cannot be judged according to given laws, but

this does not imply the necessary heterogeneity of sense between a given system of judgement and an occurring sentence. In order to demonstrate this necessary occurrence of différends, Lyotard elaborates a theory on the concatenation of sentences where the coming into being of sentences in chains or concatenations ("enchainements") guarantees the heterogeneity between known laws and occurring events. The definition of concatenation is the foundation for the most important statement in Lyotard's philosophy of language: "Concatenation is necessary, a concatenation is not". This statement is the basis for the possibility and irresolvability of différends: I will introduce it in the following section and develop a critique of its premises in Chapter V.

The concatenation of sentences

The concatenation of sentences is the third linguistic structure necessary for the foundation of différends in Lyotard's philosophy of language. It ensures that the sense of a sentence cannot be fixed, through the claim that any sentence can occur in a concatenation after a given sentence and thereby, alter its cognitive context and its sense. The open ended conjunction and can be added to any sentence, and the régime or sense of the consequent sentence affixed to the conjunction cannot be determined:

Affixed to the antecedent sentence by and, a sentence emerges from nothingness and concatenates with that antecedent. The parataxis therefore accompanies the abyss of non being that opens up between sentences, and emphasises the surprise caused by the commencement of something once the said is said. The conjunction and leads to the threat of discontinuity (or forgetting) constitutive of time, yet it also defies that threat through an equally constitutive continuity (or retention) ¹³⁷.

For Lyotard, the occurrence of consequent sentences is an ontological necessity; all sentences are followed by an endless chain of occurring sentences none of which can be determined in terms of their cognitive sense. Furthermore, all combinations of concatenation are possible and it is only convention that leads to the privileging of specific chains:

The necessity that there be: And a sentence is not logical (question: how?) but ontological (question: what?). Yet this cannot be founded on any form of evidence, for this would imply a witness independent of the concatenation of sentences and in a position to verify that it takes place ¹³⁸.

Concatenation is necessary, a concatenation is not. However, a concatenation can be taken as pertinent and the sentence stating the pertinence will be a rule of concatenation. Such a rule is a constitutive part of a genre of discourse, and states: "after this sort of sentence, these are the sentences that are permitted" 139.

If we take both parts of the statement "Concatenating is necessary, a concatenation is not" together, the necessary occurrence of différends is made apparent: there must be concatenation, yet there is no rule governing correct concatenation. Put into Lyotard's legal terminology this implies that a case must be judged, yet there can be no correct way of judging the case: judgement is reduced to an application of pertinent, but never necessarily pertinent rules. A différend occurs in cases where there is a conflict between two or more pertinent judgements of a case - two or more possible rules of concatenation.

There is, hence, a direct line of demonstration extending from Lyotard's legal presentation of différends, through his definition of names as rigid designators, and the ontological definition of sentences, to the ontological justification of the necessity and contingency of différends. The demonstration sets up the possibility of conflicts that can never be equitably resolved before a

tribunal. Note also, that the proof given by Lyotard only ensures the possibility of différends; there remains the problem of the recognition of différends - to be resolved through his theory of the sublime (studied in chapter VI of this thesis). However, it is at the stage where Lyotard grounds his philosophy of différends and his philosophy of language on an ontology of the contingent occurrence of sentences and concatenations - their coming into being - that a reconstruction of his work encounters serious obstacles. The step from a philosophy of language to an ontology is problematised by the prejudice the terms from linguistic syntax bring to the undetermined occurrence of events.

Throughout this chapter, I have combined Lyotard's disparate notes and remarks into a consistent philosophy of language grounding the possibility of différends. I have further noted that the philosophy of language must necessarily be grounded in an ontology if the thesis concerning the irresolvable nature of legal différends is to be maintained - the undetermined concatenation of sentences must be defined ontologically because cognitive and descriptive definitions contradict the prior definition of names as rigid designators. And, at this point, where ontology is introduced into Lyotard's analysis, my reconstruction must stop to consider two general critical questions:

- 1) Is Lyotard's ontology consistent with his theory of naming and sententiality?
- 2) Does Lyotard's use of ontology exploit the resources of a consistent and developed ontological account?

The second of these questions will be covered in Chapter V on the concepts of presentation and situation in Le différend, where the ontology is explained in terms of the presentation and situation of occurrences. Only after the work in that chapter will it be possible to study the remaining undefined terms from Lyotard's philosophy of language: régimes and genres. I will close this chapter with a consideration of the first question put above.

I make four main criticisms of Lyotard's introduction of ontology alongside his definition of names and sentences:

- 1) Lyotard defines sentences as ontological occurrences without considering the prior insertion of names defined as rigid designators into sentences.
- 2) Lyotard's use of Descartes' method of doubt in the introduction of the occurrence of sentences does not constitute a valid argument as to the indubitability of sentences defined as syntactical terms.

- 3) Lyotard does not give an account of how occurrences can be limited in such a way as to allow concatenation to be explained as a sequence of independent entities.
- 4) The ontological definitions of occurrence and concatenation are prejudiced insofar as they are constrained by the syntactic and semantic relationships possible between sentences defined as grammatical terms containing rigid designators or names.

The first criticism concentrates on Lyotard's claim that sentences contain rigid designators referring to referents and that thereby, a cognitive context is assigned to the designators, and a sense is associated with their referents. In his definition of sentences as occurrence, as ontologically indubitable, Lyotard does not explain how sentences so defined can include grammatical objects as refined as rigid designators. Nor does he explain how a rigid designator alone can constitute a sentence; for example, What is the status of the rigid designator "Auschwitz" when it is an occurring sentence - say, after the question "For what reason is a philosophy of totality now impossible?"? I will show, in chapter V, that Lyotard sketches an answer to these queries in his theory of presentation and situation; however, it is still a flaw in his work that the specifically grammatical or syntactic aspect of sentences as occurrence is not explained in Le

différend. The theory of presentation and situation does not fulfil that role but instead, gives an explanation of the relationship between sentences defined as grammatical entities, that is: defined in terms of régimes and genres, rigid designators and the worlds their refer to ¹⁴⁰.

A more serious consequence of the omission of the step from ontology to syntax is the prejudice brought to undetermined occurrence by the strictly defined syntactic properties of names and sentences. For Lyotard, sentences give a cognitive context to names by including them; therefore, sentences defined ontologically as occurrence must be of a form capable of assigning cognitive contexts and including names, these are formal properties restricting the "undetermined" nature of occurrence. In calling that which occurs sentence ¹⁴¹, Lyotard has made the claim that occurrence can necessarily be reduced to a linguistic medium; what is more, a medium well-defined in terms of rigid designators - for example: Do rigid designators account for reference in Chinese or ancient Egyptian scripts? Or in the case of onomatopoeic names such as a mermaid named "Splash"? It is difficult in a written text to illustrate this restriction of occurrence, but take the example of Pascal's revelation in the fragment Le Mémorial [Lafuma edition n° 737] of his *Pensées*. The source of revelation need not be understood or intuited linguistically even through the communication of the

occurrence must take a sentential form in Pascal's text and in this thesis. The prejudice brought to Lyotard's ontology of occurrence through a linguistic medium contradicts his definition of occurrence as undetermined, thereby undermining the all-important argument: because occurrence is undetermined, concatenation is contingent.

Lyotard presupposes the linguistic nature of ontological occurrence. This does not invalidate his philosophy of language, his account of names as rigid designators, his concepts of the presentation and situation of cognitive worlds and universes of names, it does however demonstrate the illegitimate overextension of the domain of application of the philosophy. The heterogeneity established between rigid designators, their referents, and the cognitive senses they can be associated with, is assumed to be a property of occurrences given as sentences, yet this assumption is only possible if occurrence and a predetermined syntactical definition of sentences are confused. The classic example of the problems linked to this confusion comes from Lyotard's own text; for him, silence is a sentence and there are therefore many heterogenous, yet equally valid, concatenations to follow it, but this second point depends upon silence being a syntactic sentence - a difficult point to defend if a rigid designator, a referent and a cognitive sense must be recognised in the occurrence of silence, or death, or love

for instance. The questions that arise from this problem are of the type: Must silence refer to something? Does a death have a sense? and Can faith be expressed through a rigid designator?

The confusion of ontological occurrence with syntactic sentences is first introduced through Lyotard's mis-use of the Cartesian method of doubt. He exploits the familiarity of Descartes' method to lend universality, universal self-evidence, to the remark: the sentence "I doubt" must exist. Because the Cartesian cogito is the ontological basis for Descartes' epistemology, Lyotard is able to make a similar step from the "indubitable" sentence "I doubt" and thereby, the indubitable occurrence of sentences becomes the basis for the universality of Lyotard's philosophy of language. However, such a step cannot be made if any presupposition is set down concerning the nature of the "I" in "I think" or the sentence "I think" in the statement: "'I think' is an indubitable sentence"; for if this is the case, then a universal status is illegitimately conferred on those presuppositions, because the method of doubt does not allow for presuppositions that can themselves be put into question. It is this rule that Lyotard contravenes in deducing that a sentence - a syntactic term with semantic properties - is indubitable, and it is through this contravention that the problems noted in my first criticism above are introduced into Lyotard's philosophy of language.

My third and fourth criticisms of Lyotard's introduction of ontology into his philosophy of language follow from the application of the two earlier points on occurrence to the concept of concatenation. In prejudging occurrence through the syntactic properties of sentences, Lyotard also prejudges concatenation, or the occurrence of events in series. The statement: occurrence takes a sentential form, implies that the sequential occurrence of events takes the form of a parataxis (juxtaposition) of sentences - that a concatenation of occurrences is a sequence of sentences inter-linked by the conjunction and. However, this property of concatenation does not follow from the definition of occurrence as that which comes into being. Occurrence need not take the form of a series of distinct entities, and concatenation does not necessarily imply that new events must be appended to chains of sentences as an addition or conjunction of them. Occurrence only takes the form of a sequential concatenation of distinct entities if it is presupposed that an occurrence is a syntactical sentence. I have already demonstrated how Lyotard cannot define occurrence in this way; therefore, his analysis of concatenation is not ontologically valid: everything that occurs does not occur in a chain of sentences.

Through the four criticisms I have stated and developed above, the function of the ontology at the basis

of Lyotard's definition of sentences has been undermined. Lyotard depends on the ontology for the demonstration of the contingency of occurrence and concatenation, and his maxim "Concatenation is necessary, how to concatenate is not" is ontological: "The necessity that there be: And a sentence is not logical (question: how?) but ontological (question: what?)". The problem is that the ontology developed by him cannot found those conclusions because they are presupposed in his introduction of occurrence and concatenation through the use of the notion of a sentence, already given a syntactic and semantic definition in his philosophy of language - sentences contain names as rigid designators and fit a cognitive context to given referents. The linguistic term sentence should not have been included in the following quote; but then, Lyotard's philosophy of language will lose its ontological basis if the word is excised.

By: A sentence, I understand the sentence that is the case, der Fall, the token sentence [in English in the original], the sentence as event. A sentence type is the referent of an occurring-sentence ¹⁴². Sentences escape the test of universal doubt, not because they are real or true, but because they are that which occurs, what is occurring [in English in the original], das Fallende ¹⁴³.

Conclusion

In the conclusions to the two previous chapters I differentiated two moments in the work accomplished on Lyotard's affectual and legal presentations of the différend: a first moment gave an account of the incompleteness of the domain under investigation - I demonstrated how statements made in the domain needed to be underpinned by the work from a different area, for example: the statement of the irresolvable nature of différends, seen as legal cases, had to be proven by a demonstration from Lyotard's philosophy of language. A second moment in my conclusions to chapters II and III drew more direct criticisms of Lyotard's work. His legal and affectual presentations of the différend were shown to involve irredeemable flaws: for example, the artificiality of the distinction between the judgement of tribunals and the judgement sensitive to différends (as shown in chapter III).

The conclusion to this chapter involves the same two moments. These follow on from the main question of the chapter: Can Lyotard's philosophy of language provide the theoretical basis for the claim that différends are conflicts that can never be equitably resolved? The answer to this question led to an area where further study was required - Lyotard's ontology as presented through the

concepts of presentation and situation - and to an impasse: the key maxim from Lyotard's philosophy of language cannot be deduced from the ontology at the foundation of that philosophy - the ontological study of the occurrence and concatenation of sentences. The claim "Concatenation is necessary, how to concatenate is not" does not follow from the definition of occurrence as sentence and of occurrences as concatenations of sentences, this is because the semantic and syntactic properties of sentences in Lyotard's philosophy of language prejudge the forms of occurrence and concatenation, thereby annulling the capacity ontology has for making universal statements such as the maxim given above.

Thus, this chapter points towards an area of further study: the concepts of presentation and situation in Le différend, to be analysed in chapter V. It also brings a definitive criticism of Le différend in its conjunction of a philosophy of language and an ontology. Finally, note how a pattern is beginning to emerge between the analysis of the various presentations of the différend. Flaws appear in Lyotard's work where he grounds a presentation of a différend in one area on the theory from another - for example: the legal presentation on the philosophy of language; yet, that foundation of one area in another is essential to the viability of the key statements made in each one; in chapter II the statements were: Différends are

the only obstacles to the hegemony of capital and Auschwitz
is the paradigmatic différend: in chapter III: Différends
are conflicts that can never be equitably resolved: in
chapter IV: Concatenation is necessary, how to concatenate
is not. I will now proceed, in chapters V and VI, to
investigate the foundations of the statements: "régimes are
heterogenous", "genres are incommensurable".

Chapter V - Presentation, situation and occurrence

Introduction

In this chapter and the next I intend to further the thesis that has emerged in my conclusions to chapters II, III and IV. I will sharpen that thesis by bringing it to bear on Lyotard's concepts of presentation and situation (in this chapter) and on his use of the sublime (in chapter VI). The thesis to be clarified and extended is the following: in the elaboration of his philosophy in Le différend through definitions of the différend in disparate modes of philosophical analysis - subjective affectual conjecture, philosophy of justice, philosophy of language, and ontology -, Lyotard grounds the apodictic statements from each mode in the philosophy of another, this strategy entails irresolvable contradictions between the different philosophies used in Le différend. Although the philosophy of différends depends upon apodictic, incontrovertible statements, these cannot be proven in Lyotard's theory without invalidating his diverse definitions of the concept of a différend.

The thesis proposed above was observed first in Lyotard's grounding of his conjectural affectual concerns, given in chapter II, and in the philosophy of justice or legal philosophy as presented in chapter III. His sentimental, affectual concern for the event of Auschwitz was given a legal context through the definition of a différend as a conflict that could not be equitably resolved before a tribunal, and Auschwitz became the paradigm of a legal différend. Thereby, Lyotard's sentiments on the subject of the limits of thought, and speculative reason in particular, were given a grounding in the legal presentation of the différend. In turn, this legal approach to the incommensurability of events and the judgement of events was seen to be dependent on the apodictic statement: différends are conflicts that can never be equitably resolved. This statement was not grounded in the legal philosophy itself and proved to be dependent, after my work in chapter III, on the philosophy of language given in Le différend.

Through the linguistic definition of names as rigid designators, and through the translation of legal debate into the linguistic structure of addressers, referents, senses and addressees, Lyotard ensured that the sense ascribed to any given referent could never be legitimately fixed. Instead, that sense became a function of the position taken by the name of a referent in networks of

cognitive sense made up of concatenations of sentences. This contingent aspect of the relation between a referent and a sense through a name or rigid designator ensured the irresolvable nature of différends by barring the possibility of ascribing a particular just judgement to the name of any case up before a tribunal. The impossibility of equitable resolutions of différends was guaranteed by the definition of names as rigid designators devoid of sense. However, Lyotard's linguistic theory on naming was itself dependent upon a theory of the concatenation of sentences that required a definition of sentences and concatenation from outside his philosophy of language.

In order to retain the irresolvable nature of différends through time, so that différends could never be resolved, Lyotard had to define sentences and concatenation in such a way as to leave the sentences and chains of sentences (concatenations) in which names were to be positioned absolutely undetermined. If there were rules to govern which sentences could include given names and which concatenations could follow from those sentences, then those rules would form the basis for equitable judgements of différends, hence contradicting their legal definition. In chapter IV of my thesis, I demonstrated how an absolutely undetermined definition of sentences and concatenation could not be formulated from within Lyotard's philosophy of language due to the determined form

definitions had to take in his linguistic theory. Therefore, Lyotard defined the remaining terms from his philosophy of language ontologically: sentences were given as that which is, the being of which cannot be denied, and concatenation was given as the succession of undetermined occurrences in chains of events. This ontology was governed by the law or apodictic statement: "Concatenation is necessary, a concatenation is not". The law is the foundation for the heterogeneity of régimes of sentences and the incommensurability of linguistic genres, and follows from the fact that in Lyotard's ontology everything that is is sentential and hence part of a concatenation of sentences, yet whatever occurs is not determined by that which precedes it in concatenation.

The statement given above is the point where the tension between Lyotard's philosophy of language and his ontology becomes apparent. I will study that tension in this chapter so as to emphasize my overall thesis concerning the foundation of Lyotard's disparate definitions of the différend in contradictory modes of philosophy; my argument will be: the definition of a différend in the philosophy of language is grounded in the ontology, yet the two modes of philosophy contradict one another. Lyotard testifies as to the necessary conjunction of ontology and philosophy of language in his book Pérégrinations, where he also states different forms of the

statement concerning the necessity and contingency of occurrence:

Le différend (1983) tries to give an ontological and linguistic (or better yet, "sentential", "phrasic") status to what Arakawa calls the "blank", [...]. It is the emptiness, the nothingness in which the universe presented by a phrase is exposed and which explodes at the moment the phrase occurs and disappears with it. The gap separating one phrase from another is the "condition" of both presentation and occurrences, but such a "condition" remains ungraspable in itself except by a new phrase, which in turn presupposes the first phrase. This is something like the condition of Being, as it is always escaping determination and arriving both too soon and too late ¹⁴.

[My emphasis]

The "blank" or "condition" in the quote corresponds to what I call the apodictic statement or law.

The structure of this chapter involves an account of the connection between the legal, linguistic and ontological definitions of the différend. Followed by an introduction of the key terms from Le différend to bridge

the gap between the philosophy of language and the ontology: presentation and situation. Then, through those terms, I will study the contradictions that occur in Lyotard's use of his ontological law of contingent and necessary concatenation in his philosophy of language. I will also use my analysis of presentation and situation to introduce a short section on the concepts of régimes and genres as they operate in Le différend: in this section the deduction of the heterogeneity of régimes and the incommensurability of genres will be explained. The main source for the critical work of the chapter is Jacques Derrida's work on the interrelationship of language and Being applied to the notions of occurrence and sententiality in Lyotard's philosophy ¹⁴⁵.

Ontology and the legal presentation of the différend

The role played by Lyotard's ontology in grounding his philosophy of language can only be understood to its full extent in the context of the legal presentation of the différend. This is because the difficulties encountered in the definition of the linguistic terms of "sentence" and "concatenation" stem from constraints inherited from the fundamental statement of the legal definition of the différend: a différend can never be equitably resolved. I have given the argument from Lyotard's philosophy of

language tracing this legal property of différends through to the linguistic definitions of sentences and concatenation in chapter IV of this thesis. That argument works through the definition of différends as properties of sentential debates involving an addresser, a referent, a sense and an addressee, to the definition of the name, the crux of the debate, as a rigid designator empty of sense. I will not develop the argument from chapter IV again in this chapter. Instead, I will determine and define the key terms on which the argument and the translation from legal to linguistic presentation depends: instance, presentation and situation.

I have shown, in chapter III, that Lyotard first defines a différend as a conflict, between two or more parties, that cannot be equitably resolved. That definition is a negative definition with respect to legal justice and what I have called the judgement of tribunals. In chapters II and III, I further showed how the legal definition had to be completed in order to underpin Lyotard's claims concerning the importance of différends for theories of judgement. The model for such claims is the following:

[...] it is impossible for the judgements of new tribunals to not create new torts; this is because they will regulate, or will think they regulate différends as litigations ¹⁴⁶.

The importance of the above claim is its statement of the irresolvable nature of différends: whatever judgement is passed over a différend, it will necessarily lead to further tort. This fact directly follows from the definition of différends as always irresolvable.

The important point to be made in the analysis of the irresolvable nature of différends is that such cases cannot be solved even if their judgement takes account of this nature. To accept that a tort must occur when judgement is passed over a particular différend and therefore, to turn to criteria of judgement other than the attempt to meter out equitable justice, is not a more legitimate way of judging différends. According to Lyotard, because différends are irresolvable, there is no correct approach to the judgement of a différend even if the judge takes account of the irresolvable nature of the case. Therefore, in stating that différends can never be resolved, Lyotard is making the wider claim: there can never be a just judgement of a différend. Where the notion of a just judgement corresponds to an idea of universal legitimacy. However, this wider inference puts a premium on the meaning of the word "equitably" in Lyotard's legal definition of the différend:

Different from a litigation, a différend is a case of conflict between (at least) two parties

that cannot be judged equitably (tranche équitablement: judged or split equitably). This is because there is no rule of judgement applicable to both arguments. The legitimacy of the one does not imply the illegitimacy of the other. Therefore, if one and the same rule of judgement is applied to them in order to split their différend, as if it were a litigation, then a tort is inflicted on one of the parties in dispute ¹⁴⁷.

[My emphasis]

By an equitable judgement Lyotard means a judgement fair to both sides, or all sides of the différend. A definition he supplements with his interpretation of fairness, that is: to judge a case through a rule applicable to that case, "a rule of judgement applicable to both arguments", is to be fair to it. An applicable rule is then defined as a rule consistent with the rules of the genre of discourse used by a party to put its case, "the genre of the judged discourse". Thus, there can be no universally legitimate criterion for the judgement of différends. Criteria of fairness, expediency, utility and objectivity are all contingent in the judgement of différends; this is because the application of a single criterion to two incommensurable arguments is a priori illegitimate insofar as it must be incommensurable to one

of them. This contingent aspect of all judgements passed over différends is the basis for Lyotard's critique of any philosophy that lays claims to universal legitimacy or validity and, a fortiori, of all judgements based on such claims. However, the statement of the necessarily contingent aspect of all judgements of différends depends on two points that cannot be justified from within Lyotard's legal presentation; these are:

- 1) Lyotard's definition of rules of judgment presupposes a theory of genres of discourse from his philosophy of language;
- 2) The legal definition of différends as irresolvable depends on the incommensurability of genres; therefore, Lyotard must demonstrate that genres are incommensurable in his philosophy of language. In order to demonstrate these two points Lyotard must develop his philosophy of language.

The correspondence between the legal presentation of the différend and its definition in the philosophy of language is effectuated through a translation of the legal instances of the plaintiff, the court, the plaintiff's argument and the wrong suffered by the plaintiff into a sentential model (as seen in chapter IV). A sentence takes the place of the legal case and the addresser of the

sentence becomes the plaintiff, the addressee becomes the court, the wrong is the referent of the sentence and the plaintiff's argument is its sense. The substitution transforms the différend from being a legal problem to being a property of the concatenation of sentences. The judgement of the court or tribunal is a sentence following on from the sentence representing the case; this concatenation allows Lyotard to give a linguistic formulation of the différend:

No sentence is the first [of a concatenation]. Not only do others precede it, but the modes of concatenation implied by them, and therefore possible, take the sentence into account and involve it in the pursuit of a stake. They take effect through the sentence. And, in that sense, an occurring sentence is put into play in a conflict of discourses. That conflict is a différend, [...] 148.

[My emphasis]

The translation of the différend from a legal presentation to a presentation in a philosophy of language is of two-fold importance; firstly, it is the basis for Lyotard's proof that différends can never be resolved; secondly, the linguistic definition of différends permits a general analysis of each individual case of a différend

independent of the difficult legal concept of tort. This second precision of the différend is vital to Lyotard's work because it will allow the definition of particular cases of conflicts as différends, prior to, and independent of individual judgements of them¹⁴⁹. This is important for a critique of justice in general given that the detection of legal tort cannot indicate a différend - for otherwise, all torts would determine différends (which is not the case given that some torts can be redressed by judgements righting the wrong leading to the tort). In the next section I will show how these two points of importance in the philosophy of language become dependent on Lyotard's ontology through the concepts of presentation and situation.

Instances, presentation and situation

In making the transposition from a legal definition of a différend to a linguistic definition, Lyotard must demonstrate that the terms from the legal definition can be expressed in their entirety, with their correct reference, through sentential presentation. The différend referred to in legal terms must be equivalent to the différend referred to in terms from the philosophy of language. If this equivalence is not maintained, then the philosophy of language will not serve as the basis for the demonstration

of the irresolvable nature of différends. This follows from the argument: if the legal, practical différend is more or less conditioned than its linguistic expression, then the difference in conditions can invalidate any law holding true in the philosophy of language when it is transferred into practice. For example, let there be a factor in legal practice - say a factor of Aristotelian phronesis or a factor of universal wiseness - and posit that such a factor cannot be expressed in Lyotard's philosophy of language; it is then possible for that ineffable factor to serve in the practical and legitimate solution of différends even though they are theoretically irresolvable according to laws from the philosophy of language. The existence of such cases - indeed, even the possibility of their existence - would invalidate Lyotard's recourse to his philosophy of language.

A further point to add to the above remark on translation is that it is not only Lyotard's legal analysis that must be transferred into his philosophy of language. In fact, from my work in chapter III, I recall that legal judgement operates as a category serving to define justice in general, judgement as a reaction or subsequent action after events; therefore, Lyotard must translate judgement in general into the terms of the philosophy of language. All events and all reactions to events must be accounted for. Otherwise, he will only have translated the form of

judgement he wishes to exclude, instead of the judgement defined negatively in opposition to the judgement of tribunals. Here, I rejoin my work from chapter IV, where I noted Lyotard's definition of sentences as all occurring events. Lyotard will base the translation of all events - including legal cases - on this notion of occurrence and hence, on the notion of the concatenation of sentences.

The transposition of practical events into sentences begins through the use of a bridging concept: the notion of an "instance". By bridging concept I mean a theoretical term used both in Lyotard's legal analysis and in the philosophy of language. In law, the instances of a case are the plaintiff, the referent of the plaintiff's discourse, the sense of that discourse or argument and the judge. In other words - and here the translation is already in motion - the instances of a case are: the addresser (the plaintiff), the referent (the wrong), the sense adjoined to the referent, and the addressee (the judge, tribunal, court, etc...). The practical legal instances will also be, according to Lyotard, the instances of a given sentence (its addresser, addressee, referent and sense):

One should say: the addresser and the addressee are instances presented by a sentence in which

they may or may not be mentioned. The sentence is not a message passed from an addresser to an addressee independent of it. Rather, they are situated in the universe presented by the sentence; this is also the case for its referent and its sense ¹⁵⁰.

The above quote is the statement about which Lyotard's translation turns, I will therefore insist on the points it sets out to make.

The first point to be made is that the sentence need not mention an addresser and an addressee, these instances do not have to be marked or indicated by the sentence. Lyotard's linguistic terms do not translate a practical event by an account of the participants, sense or topic of a dialogue or dispute. Thus, legal instances are not directly invoked by a sentence but instead, they are presupposed by its position in a concatenation of other sentences and by the world of names defined by that concatenation. It is in this sense that the addresser and an addressee can be presented by a sentence: "the addresser and the addressee are instances presented by a sentence in which they may or may not be mentioned". Therefore, the concept of presentation is not a form of direct description or direct reference.

The second important point I will make concerning a sentence's presentation of its instances is that it does not present an addresser and an addressee as if they were using the sentence for communication. The sentence is not a line of dialogue between interlocutors not directly mentioned in the line; neither does the sentence refer to its presented instances through being used by them in a conversation, debate or dispute: "The sentence is not a message passed from an addresser to an addressee independent of it". On the contrary, a sentence presents all four instances in a similar fashion in its own presented universe wherein they are subsequently situated: "Rather, they are situated in the universe presented by the sentence". Given the two points above, I will continue my study of the translation of legal instances into Lyotard's philosophy of language through an analysis of his model of presentation and situation, it is in this model that the importance of his ontology becomes apparent.

Sentences, presentation and situation

My thesis concerning the contradictions arising from Lyotard's multiple approach to the definition of the différend will focus on the concepts of presentation and situation; this is because they relate the different approaches to one another. Not only do they forge the link

between the legal definition of the différend and its definition in the philosophy of language, they must also relate those definitions to Lyotard's ontology, because presentation and situation are properties of sentences defined ontologically. The concept of presentation is referred to the occurrence of sentences, and the concept of situation issues from their concatenation - "Presentation is that a sentence occurs":

A presentation is the occurrence of at least one universe. A situation is the putting into relation of the instances from within the universe presented by a sentence through the form of the sentences concatenating with it.

[My emphasis] 151

Therefore, the analysis of sententiality from Lyotard's philosophy of language, as I have outlined it in chapter IV, also applies to presentation and situation. Furthermore, so as not to invalidate the philosophy of language, the concepts of presentation and situation must not contradict the definitions and rules of that philosophy, most notably: the definition of names as rigid designators empty of sense, the definition of sentences as undetermined occurrences and the law of concatenation stating that concatenation is necessary but a particular concatenation cannot be. Hence, my overall thesis will be

brought to bear in this chapter when I verify whether the bridging concepts of presentation and situation do indeed contradict the ontological foundation to Lyotard's philosophy of language.

In addition to the requirement of not contradicting Lyotard's philosophy of language or ontology, his theory of presentation and situation must also serve to complete the areas in those definitions of the différend that were left without explanation within the systems of the philosophies. In my work in chapter IV, I noted the lack of certain structures essential to the philosophy of language. In particular, the structure explaining how cognitive senses were ascribed to given names or rigid designators and their referents when included in "networks of senses" was not given. For différends to be possible, different senses must be ascribed to a same rigid designator each time it appears in a sentence, and networks of sense must be constructed out of concatenations of sentences; both these properties of sentences will be accounted for through the concepts of presentation and situation. It is important to note, however, that this explanation must obey certain conditions in order for the definitions of différends and rigid designators in the philosophy of language to be consistent. Firstly, the possible senses that can fit a given rigid designator must not be determined; secondly, the concatenations ascribing sense to a designator must be

heterogenous. These constraints guarantee the heterogeneity of the possible judgements following a given différend, and guarantee that there can be no just judgement of a différend.

In his definition of names as rigid designators, Lyotard defines a network of rigid designators as a set of names of "objects" and names of relations designating a corresponding set of "given things" related to one another, this latter set is a world (Lyotard calls the former a "world of names"):

Networks of quasi-deictics made up of names of "objects" and names of relations designate "given things" and relations between those "things", that is: a world ¹⁵².

The position of a name in such a network allows it to designate an object rigidly and establishes a strong correspondence between the name's relation to other names and the object's position in a world of "things". However, for the theory of différends to be successful, a name and its referent must not be rigidly connected to a given sense, it must be possible for many heterogenous senses to fit a same name and object. For this reason, Lyotard introduces the structure of a sentence-universe; names are connected to a sense when they are situated as instances in

such a universe. The connection between the name and its sense will be weak because many heterogenous sentence-universes can take the name as instance:

A proper name's referent takes a strongly determined position in networks of names and relations between names, yet its sense is weakly determined due to the great number and heterogeneity of the sentence-universes that can take it as instance¹⁵³.

When Lyotard introduces rigid designators in his philosophy of language, he leaves the concepts of sentence-universes and worlds of names largely unexplained. It is only once he has defined sentences and their concatenation ontologically, that he returns to the earlier concepts to detail the form of their reciprocal functions - where the relation between worlds of names and sentence universes is the lynch-pin of the strong connection between objects and names and the weak connection between senses and names. This relation depends upon the concepts of presentation and situation. A sentence presents a universe, and a concatenation of sentences situates instances taken from worlds of names:

A sentence presents at least one universe. No matter what régimes it must follow, the sentence

brings forth a there is lil y a. There is that which is signified, the referent of that signification, that which does the signifying and that to which the signification is destined: a universe At least one universe, because the referent, addresser, addressee, and sense can be equivocal ¹⁵⁴.

A situation is the putting into relation of the instances from within the universe presented by a sentence through the form of the sentences concatenating with it ¹⁵⁵.

If an occurring sentence does always present the instances of referent, sense, addresser and addressee, and if those instances can be related through their situation according to the sentences concatenating with the original sentence, then Lyotard can claim to have explained the difference between the rigid association of name and referent, and the weak or changeable association of a sense with a name. However, the requisite analysis of the relation of occurring sentences and presented instances is not given in Le différend and I will argue, in the latter stages of this chapter, that Lyotard cannot provide such an analysis without invalidating either his philosophy of language or his ontology in their roles defining the différend ¹⁵⁶.

I noted, in chapter IV, that Lyotard's ontological definition of sentences could not account for the necessary inclusion of names defined as rigid designators in sentences defined as undetermined occurrences; there was an inconsistency between the syntactic and ontological form of sententiality, and this flaw rendered the ontological grounding of the philosophy of language invalid, at least in part. This same inconsistency of syntax and ontology appears when the presentation of the syntactic instances of addresser, addressee, sense and reference is associated with the presentation brought forth with an ontological sentence-occurrence and the situation related through the concatenation of occurring sentences. Lyotard does not explain how a sentence presents its instances, neither does he account for their situation through the subsequent parataxis of further sentences. In Le différend, those properties of sentences and concatenation are merely stated, they are not developed in a theoretical study of presentation and situation as necessary functions of occurrence and concatenation. The omission of this study allows for a series of criticisms on the subject of the demonstration of the undetermined nature of the link between names and senses. The most serious of these criticisms are those bringing attention to the possible contradictions that can occur if sentences do not in fact present a sense and a referent as separate instances. For such an eventuality would contradict one of the points that

had to be preserved from the philosophy of language into the theory of presentation and situation: the definition of names as rigid designators empty of sense.

From the definition of a sentence as that which occurs indubitably, and from the consequent tautology: there is something therefore there is a sentence, it does not follow that the there is lily al, brought forth with a sentence, comprises the instances of a sense and referent independent of one another. It can be argued that the presentation of instances in the occurrence of a sentence requires the conjunction of a sense and referent in one entity, and that therefore any presentation is already a situation of the instances of sense and referent. If this is possible, then the rigid designator corresponding to the sense and referent cannot be taken as empty of sense because it must make possible the relation of sense and referent situated by the occurring sentence. In this version of occurrence, a presentation is already a situation where instances are related to one another. This case does not imply that the relation between a sense and a referent is rigid, that relation can still be altered through new sentences concatenating with the first situation. The case does, however, imply that different situations are not absolutely heterogenous, they correct and modify each other through the name associated to the various senses and referent. This name cannot therefore be a rigid designator empty of

sense because, each time it is used in a new situation, it carries forward a residue of former situations of its sense and reference.

In stating but not demonstrating the bringing forth of the instances of addresser, addressee, sense and referent in an occurring sentence, Lyotard allows for the possibility of a contradiction between his theory of rigid designators and his theory of presentation and situation. It is possible for alternative accounts of the presentation of instances to invalidate his definition of names as rigid designators; take, for example, the theory proposed above, where the possibility of presentation already depends on a situation of the instances of sense and referent. In the following sections, I will analyse this criticism of Lyotard's theory of presentation and situation in order to gauge its repercussions on the other central tenets of his philosophy of language: the ontological definition of sentences and the rule of concatenation "Concatenation is necessary, a concatenation is not". In the analysis it will become apparent that both of the accounts of the presentation of instances given above (Lyotard's and mine) are not compatible with those remaining tenets. Prior to that analysis, I will give a short section on Lyotard's definition of régimes and genres. To close this section I will interpret its conclusion in terms of the legal definition of the différend.

For Lyotard, a sentence must present the instances of addresser, addressee, sense and referent together, but independent of one another, if his legal definition of the différend is to maintain that there is no legitimate mode of judgement of such cases. This is because, when a case involving a différend occurs, there must be no legitimate connection between the arguments of the parties in dispute - the arguments must be heterogenous. This is why Lyotard claims that the dispute is over the different senses attributed to a name itself devoid of sense, a rigid designator; no residue of sense is carried through the name from one argument to another, the name is a hinge between the two arguments. However, he also claims a correspondence between the occurrence of a legal différend and a sentence-occurrence - this correspondence is established through the use of the bridging concept of an instance: both legal cases and sentence-occurrences present the instances of addresser, addressee, sense and referent. Therefore, in the occurrence of the sentences corresponding to a given legal différend, the instances of sense and referent must be presented as independent of one another. If this is not the case, then the confusion of the instances of sense and referent in one presentation contradicts the function of the rigid designator designed to maintain them apart. Lyotard's definition of presentation is flawed insofar as it does not justify this necessarily separate presentation of sense and referent; hence, this omission allows for the

contradiction of the definition of rigid designators and for the overturning of the theory of différends from within Lyotard's own philosophy.

Régimes and genres

Lyotard's theory of régimes and genres is based upon his theory of presentation and situation. The definition of the terms of régimes and genre offers, therefore, a part solution to the problems arising from a sentence's presentation of its instances. Insofar as a régime is a precision of the mode of presentation of a sentence, it explains the organisation of the presented instances; similarly, a genre is a mode of the situation of those instances and thereby, can serve to clarify the process of situation. There is, however, a problem inherent to the precisions brought to the theory of presentation and situation through the definitions of régimes and genres. The latter terms are wholly dependent on the former for the justification of their most characteristic properties: the heterogeneity of régimes and the incommensurability of genres. This dependency is all the more important given that the distinction of régimes from genres depends on the fore-mentioned properties and on the distinction of presentation and situation. In this section, I will analyse both the precisions brought to Lyotard's theory by the

terms of régimes and genres, and the inconsistencies furthered in those terms from the incomplete definition of the concept of presentation.

I will first examine the relation between régimes and genres, and presentation and situation. A sentence régime (or regimen) ¹⁵⁷ is a syntactic category. According to Lyotard, sentences can be classified, following their grammatical form, into different régimes; these régimes correspond to the familiar categories of cognitive, prescriptive, performative, interrogative, exclamative, (and other) sentences. A sentence-occurrence belongs to one such category independently of the concatenations it may precede or follow. The régime of a sentence is therefore linked to its presentation: each régime corresponds to a mode of presentation of a sentence, it is impossible to translate from one mode into another and this factor ensures that régimes are heterogenous:

The heterogeneity of régimes of sentences and the fact that it is impossible to submit them to a same law (without neutralising them), is an incommensurability marking not only the relation of cognitive and prescriptive sentences but also, the relations of interrogatives, performatives, exclamatives, and others, ... ¹⁵⁸.

The heterogeneity of régimes is a consequence of their belonging to the mode of presentation of sentences. A sentence from one régime cannot be translated into a sentence from another because the translation must involve a communication of the sense presented by a sentence into the sense presented by a different sentence, this communication is impossible without a situation of the sense of the former through the sense of the latter. However, such situations are multiple and contingent, so there can be no necessary connection between the sense presented by the first sentence and its translation in the second sentence:

Sentences obeying different régimes cannot be translated into one another. Let us just consider, arbitrarily, the sense due to the form (syntax) of a sentence - thereby ignoring the lexical sense. A translation from one language to another presupposes that the sense presented by a sentence from the original language can be restored by a sentence from the language into which the translation is directed. But the sense linked to syntactic form depends on the régime the sentence follows, and on the genre of discourse in which the sentence is inserted [...]. A translation presupposes, therefore, that

the régime and genre from one language have their analogues in another [...] 159.

[My emphasis]

(I will show, below, why the insertion into a genre is a situation).

The above argument is not a sufficient proof of the heterogeneity of régimes. It is possible, given a particular situation, to translate a sentence from one régime into another if that situation is taken into account during the translation. It is in order to avoid such a possibility that Lyotard adds a further trait to the definition of the régime. More than a syntactic category, a régime also constitutes a situation of the instances of a sentence; furthermore, that situation is unique to each régime and, in this sense, régimes are modes of the presentation of a sentence:

Those universes (presented by sentences) are constituted by situations of instances (and not only the instance of sense but also, the referent, the addresser and the addressee) and relations of instances. However, the addressee of an exclamative sentence is not situated according to the sense of the presentation in the same

way as the addressee of a descriptive sentence
[...] 160.

Régimes are heterogenous because they correspond to different modes of the presentation of instances in occurring sentences.

This second definition of a régime is unsatisfactory on two counts: it is a syntactic prejudice to the undetermined occurrence of sentences defined ontologically, and it depends on the unexplained notion of a sentence's presentation of its instances (as I have studied it in the previous section of this chapter). If all sentences belong to a régime constituting a particular presentation of the instances of a sentence, then this property holds true for any occurrence-sentence; this implies a condition on Lyotard's definition of sentences as undetermined occurrence and, once again, his ontological definition of sentences is prejudiced by a syntactic property from his philosophy of language. Furthermore, the only justification given for the statement of the heterogeneity of régimes is taken from the theory of the presentation of a sentence's instances: a theory that remains unexplained in Le différend. Lyotard's whole theory of régimes is simply inadequate, it is based on undefended assertions and on observations of categories taken, without question, from traditional linguistic theory and then

grafted onto his ontology and philosophy of language. Far from resolving the tensions inhibiting Lyotard's grounding of the philosophy of language in ontology, his definition of a régime emphasizes the contradictions inherent in that project: the paradoxes due to the undetermined occurrence of syntactically well-defined sentences ¹⁶¹.

Lyotard's definition of genres does not encounter the same difficulties as his definition of régimes; there are two reasons for this: first, the notion of a genre is more compatible with the affectual, legal and ontological definitions of the différend. Lyotard's affectual concern with the hegemony of Capital is interpreted as the economic genre's hegemony over heterogenous régimes, his definition of the legal différend is given in terms of a conflict of incommensurable genres, and the ontological occurrence of différends is due to the constraints genres put on concatenations following a sentence-occurrence. Second, genres are not an intrinsic semantic property of occurring sentences, instead, they are the means by which "appropriate" - but not necessary - concatenations are determined.

Lyotard first defines a genre of discourse as a fixing of the rules of concatenation in order to determine stakes and a final goal for concatenation:

Genres of discourse determine stakes, they enforce a single goal over different régimes: a question, an example, argumentation, narration and exclamation in judicial rhetoric are heterogenous means of persuasion ¹⁶².

In this sense, the rules fixed by a genre are strategies of concatenation and there are as many genres as strategies; each genre defines a stake or goal and a set of rules for attaining that goal. These rules set down the form for pertinent or appropriate concatenations of sentences. They direct the concatenation according to patterns that will lead to the fulfilling of goals and the achievement of stakes:

A genre of discourse fixes the stake to the concatenation of sentences. For example, to convince, to persuade, to conquer, to make laugh, to induce tears, etc... Teleology begins with genres, not with sentences. But, if sentences are concatenated, then they belong to (at least) one genre ¹⁶³.

The hegemony of capital, one of Lyotard's affectual concerns outlined in chapter II, corresponds to the economic genre where the rules for the concatenation of sentences are governed by the universal criterion, or

stake, of performing a task in a minimum of time, with the absolute goal of increasing stocks in capital. With this genre all other possible concatenations of a sentence are discarded in favour of the concatenation most efficient at increasing the money supply in the least time:

Under those conditions [of the economic genre] sentences become merchandise. The heterogeneity of régimes and genres of discourse (stakes) is given a universal idiom, the economic genre, and a universal criterion: to gain time. There is also a universal measure, the strongest currency [...]. 164.

Thus, the economic genre is governed by rules enabling it to harness différends and heterogeneity to its own ends. Différends are judged according to which side in the conflict maximises the time gained in increasing the flow and amount of capital; therein, Lyotard sees the greatest threat to heterogeneity: a genre combining the judgement of différends with its own final goal and stakes - the most efficient way of resolving différends inequitably. However, in différends, he also detects the only obstacle to the hegemony of Capital or the economic genre:

The only insurmountable obstacle to face the hegemony of the economic genre is the

heterogeneity of genres of discourse and régimes of sentences, that there is not only "language" or "being" but also occurrence ¹⁶⁵.

The threat of the economic genre uncovers the dual nature of genres in general. The différend issues from a conflict of incommensurable genres and yet, it is also lost or dissipated through its concatenation or judgement in a single genre, insofar as a différend must be judged according to one genre only. This duality raises the problem of how the incommensurability of genres can be, at the same time, grounded in the possibility of différends - if différends did not occur, then genres would not be incommensurable - and also be their cause - différends occur because genres are incommensurable:

[...], an occurring sentence is put into play in a conflict of genres of discourse. That conflict is a différend. This is because the success (or validation) proper to one genre is not that of the others. [...]. The multiplicity of stakes accompanying the multiplicity of genres means that each concatenation is a "victory" over all others. The discarded concatenations remain neglected potentialities, forgotten, repressed.

[My emphasis] ¹⁶⁶

The problem highlighted above will become viciously circular if the incommensurability of genres, the fact that "the success (or validation) proper to one genre is not that of the others", is not grounded elsewhere than in the occurrence of différends. At one stage in Le différend, Lyotard seeks to solve this problem through an appeal to the heterogeneity of régimes, I will ignore this attempt given the criticisms I have made of the concept of a régime in this section. Instead, I will move on to the next section of this chapter and enquire as to whether the ontological ground to the concepts of presentation and situation can justify the incommensurability of genres and hence, the occurrence of différends.

Ontology, presentation and situation

Although Lyotard treats régimes and genres as closely related entities - régimes are included in genres and the heterogeneity of régimes is given as a condition of the incommensurability of genres - I am justified in ignoring the role played by régimes in the definition of genres because both concepts depend on a more fundamental distinction: the distinction between presentation and situation. In this section, I will study the connection between all the above concepts and I will note how the distinction between presentation and situation depends on

an ontological study of the occurrence of sentences. This same study is at the basis of Lyotard's rule of concatenation, "Concatenation is necessary, a concatenation is not"; and therefore, I will also analyse the relation of presentation, situation and the incommensurability of genres to that rule. The importance of ontology over and above the linguistic, semantic concept of a régime in the work on genre is made apparent in the following quote:

In principle, every sentence is the stake of a différend between genres of discourse, no matter which régime the sentence belongs to. That différend issues from the question accompanying each sentence: How to concatenate with this sentence? The question itself issues from the void "separating" the sentence from its "consequent". Différends occur because Ereignis occurs, or, they occur in the same way as the occurrence of Ereignis. However, as far as possible, this is forgotten; genres of discourse are the modes of the forgetting of the void or of occurrence: they fill in the gaps separating sentences. Even though it is the void that opens up the possibility of ends proper to genres. If the manner of concatenation was necessary (filled), then there would not be a number of

possible modes, no gap would leave room for that far off causality, "the final cause" 167.

[My emphasis]

It is important to note how, in the above quote, both the question of différends and the question of genres are directed away from any consideration of régimes, and towards an ontological study of the occurrence of sentences. The importance of ontology is underlined through Lyotard's use of the term Ereignis, first noted in Le différend in a long note on Aristotle, Derrida and Heideggerian ontology: the occurrence of sentences is more than a linguistic or syntactic property, it is similar to the occurrence of Being as it is given in Heidegger's use of the term Ereignis. Note, though, that Lyotard's appeal to a Heideggerian term is of little or no importance to the argument of his book - although it might be of importance to a critique of Le différend - and I will not, therefore, pursue a study of Heidegger's ontology 168. Instead, the purpose of the term Ereignis is to mark a return to the ontology particular to Lyotard's theory of the occurrence of sentences. This theory is relevant, here, due to the fundamental law governing occurrence and concatenation: "Concatenation is necessary, a concatenation is not". The law will ensure the contingency of the genres governing the concatenations to follow an occurrence: "genres of

discourse are the modes of the forgetting of the void or of occurrence: they fill in the gaps separating sentences".

Lyotard must account for the application of the law of concatenation to his theory of genres for his use of the law to remain valid outside the treatment of the simple occurrence of sentences (given in chapter IV). To do this, it is not sufficient to state that genres give stakes and goals to the concatenation of sentences. He must also explain how those limits can be ascribed to concatenation despite the contingency of the following of one sentence by another. In other words: How can the law of concatenation still hold, if genres can "fill in the gaps separating sentences"? The answer to the question lies in the distinction between presentation and situation, where the possibility of genres is divorced from the occurrence of sentences: a genre will become a property of the situation of sentences, whereas occurrence will be given in terms of their presentation. It is because a situation is contingent to the presentation of a sentence that a genre will be a contingent, yet possible aspect of the occurrence and concatenation of sentences.

In the earlier sections of this chapter, I have described presentation as the bringing forth of the instances of addresser, addressee, sense and referent through the occurrence of a sentence. When a sentence

occurs there is a presentation of those instances in the universe formed of all the possible situations that can relate the instances to one another. In this sense, presentation is the precondition, or possibility, of situation; Lyotard claims that any situation depends upon the prior bringing forth, or presentation, of instances in a universe. Thereafter, a situation is defined as a putting into relation of the presentation of a sentence, of the instances brought forth by that presentation, through its concatenation with another sentence. It is at this stage, where the situation of instances is accomplished through a concatenation of sentences, that genres are introduced. Genres are modes of the situation of instances. No sentence can situate the instances it brings forth, this can only take place as that initial sentence is itself taken as an instance of a consequent sentence, only then does a genre situate the initial instances, and that genre is the one governing the concatenation of the two sentences:

A sentence's presentation can only be determined according to genre if the sentence is situated in the universe of another sentence, that is: as a presented presentation. This is why genres of presentation, if there are such things, can only be presented as genres of situation¹⁶⁹.

This implies that, although the régime of the initial sentence calls for certain concatenations or genres to follow it: "the régime of the sentence calls for certain concatenations", this "calling" is in no way determinant.

There is, in Lyotard's ontology, an absolute distinction between the presentation brought forth by a sentence and the situation of that presentation through the concatenation of the initial sentence with a consequent one. The presentation brought forth can be situated by any sentence that takes the initial sentence as one of its instances; there is, therefore, no necessary relation between a presentation and a presented presentation, or situation, of that presentation, and furthermore, any occurrence can take the initial sentence for instance - there is an infinite number of contingent situations of any presentation. This is a formulation of the law of concatenation in terms co-extensive to Lyotard's definition of a genre: a sentence can be included in any concatenation governed by any genre because concatenation is necessary, yet a particular concatenation is not. No genre necessarily governs the concatenation of a particular sentence, because the presentation brought forth by that sentence can be situated by a sentence belonging to any genre. Thus, the distinction between presentation and situation allows genres to be accounted for within Lyotard's ontology. What remains to be shown is why genres

are incommensurable, why différends occur because of that incommensurability and, more importantly, why there can be no necessary relation between a sentence's presentation and a subsequent situation of that presentation.

The incommensurability of genres is a consequence of the contingent nature of concatenation allied to the genre's regimentation of sentences according to stakes and goals. A genre situates the presentation brought forth by a sentence when the sentence following it is determined by the genre. Thus, when the contingency of concatenation is restricted according to the rules of a given genre, then the sentences following that concatenation belong to the genre. From one occurring sentence many different genres can restrict concatenation according to their own particular stakes and goals, which genre does in fact form the concatenation is contingent and, although some genres are more probable than others due to the régime of the sentence, no genre is necessarily called for by the initial occurrence. Therein lies the incommensurability of genres: there is no rule to determine the relation of one genre to another because the belonging of a sentence to a genre is contingent and therefore, the connection between genres is also contingent. Irrespective of the stakes and goals that make up a genre, any one genre is incommensurate to any other, because the rule determining the concatenation of sentences ordered according to the one to the sentences

ordered according to the other is necessarily contingent. The contingency of concatenation is more fundamental than the stakes and goals of genres:

It is enough to pay attention to this: there can only be one sentence "at a time". Many possible concatenations (many possible genres) but, "each time", only one actual concatenation ¹⁷⁰.

[My emphasis]

Each time a sentence is concatenated the genre is contingent, there is no relation between its actualisation and the non-actualisation of other genres - other than the necessity of the concatenation of one sentence at a time. The actualised and the non-actualised genres are therefore incommensurable.

In the concatenation of sentences ruled over by incommensurable genres the legal definition of a différend and its definition in the philosophy of language are brought together. Given the contingency of the concatenation of one sentence onto another, there is a necessary différend between the two sentences; the universe presented by the first sentence is illegitimately restricted by the situation of the instances belonging to the universe in the presentation of the second sentence, there is a différend between the actualised situation and

all those that remain potential but unactualised in the presented universe. This sentential différend is, though, far removed from the différend defined as an irresolvable conflict between two or more parties involved in a dispute. The passage from one definition to the other is effectuated through the concept of a genre. Legal différends occur when the parties in dispute argue according to incommensurable genres, those genres are incommensurable because of the différends between sentences brought about through the contingency of concatenation. Thereby, the legal différend rejoins the différend in the philosophy of language through their common ground in the law of concatenation: "Concatenation is necessary, a concatenation is not":

First, when a sentence occurs, one must concatenate. [...]. Second, concatenation is necessary, how to concatenate is contingent. [...]. Genres of discourse determine stakes, they enforce a single goal over sentences from different régimes: a question, an example, argumentation, narration and exclamation in judicial rhetoric are heterogenous means of persuasion. From this, it does not follow that différends between sentences are eliminated. From each sentence a different genre of discourse can inscribe the sentence towards a different goal.

Genres of discourse merely push the différend
from the level of régimes to the level of ends.

[My emphasis] 171

The last two paragraphs above illustrate the first part of my main thesis. The various definitions of the différend depend upon each other; the legal on the definition from the philosophy of language, both of these on the ontology of the occurrence and concatenation of sentences. In this chapter, this point is brought to bear, in particular, on the definition of genres as incommensurable as it relates to both the legal definition and the definition in the philosophy of language. Further, the chapter demonstrates, through the study of the concepts of presentation and situation, that the incommensurability of genres depends on an ontological distinction: the bringing forth of an occurrence as distinguished from its situation in a network of sense (and sentences). In the final section of this chapter, I will complete this first part of my main thesis with a demonstration of how the fundamental ontology given at the basis of the distinction proves to be inconsistent with the legal philosophy and the philosophy of language. This will answer the question left unanswered above: Why can there be no necessary relation between a sentence's presentation and a subsequent situation of that presentation?

Jacques Derrida's and Lyotard's ontological distinction

In the previous sections of this chapter, I have shown how Lyotard's philosophy of language and legal presentation of différends depend upon the distinction he draws between the presentation brought forth by a sentence and the subsequent situation of that presentation in further concatenations with the initial sentence. In this section, I will set out and criticize the argument given in defence of this distinction in Le différend. I will pay particular attention to the demonstration of its ontological nature and to the aspects of the argument pertaining to the philosophy of language and legal presentation. This exposition will be followed by a critique of the ontological distinction from the point of view of Jacques Derrida's work in the book Schibboleth. The philosophy developed in the book rejoins and supports the second part of my central thesis in its uncovering of the inconsistencies that plague Lyotard's ontology, once it is seen in terms of his philosophy of language and legal presentation of différends.

It is indicative of the problems likely to beset Lyotard's ontological distinction that two very different, even opposed arguments are given in its support. And it is of further interest to note that these two arguments are differentiated, in Lyotard's text, at the point where he

enters into an imaginary or Platonic dialogue with Jacques Derrida, "This is still a metaphysical 'reading' subordinate to the hegemony of presence, Derrida would say". The two arguments given by Lyotard are: an argument about the diachronic nature of time and the synchronic nature of occurrence, and an affectual argument turning on the feeling, sublime feeling, generated by occurrence. These two arguments can be summed up respectively in the opposition of the expressions il y a and arrive-t-il? in Lyotard's description of the occurrence brought forth as the presentation of a sentence; only the second expression will serve to refute Derrida's accusations concerning a metaphysics of presence. This is because the term il y a corresponds to the discussions in Le différend about Kant's use of the notion of the "given" in place of presentation, and Aristotle's conception of the "now" as it expresses the status of occurrence in time. Lyotard notes that both Kant and Aristotle can be interpreted as still depending upon the notion of a "presence" falling into metaphysical time. For this reason, he introduces the term Arrive-t-il? given as the question of being and non-being called for by the feeling that nothing could occur:

Occurrence, the sentence as what, as what arrives, is not a question of time, but a question of being/non-being. This latter question

is called for by a feeling: it is possible that nothing may arrive ¹⁷².

The problem to be solved in this chapter is, therefore: Is Lyotard's conception of the Arrive-t-il? complementary to his conception of the il y a in presentation, or, are the two terms inconsistent? I will begin to answer this question through a consideration of the distinction between presentation and situation as it is grounded in Lyotard's work on time and the il y a (the "there is") - I will translate the Arrive-t-il? by "Is there?". Lyotard first introduces the il y a where he attacks Kant for confusing presentation with situation and for putting the former under the aegis of the latter, this repression of presentation is the forgetting of the there is in favour of the what there is ("ce qu'il y a"). The demotion of presentation is explained, in Le différend, in the terms of the legal study Lyotard uses to interpret Kant's faculties - I have shown aspects of this study in chapters III and IV. His point is: in Kantian Darstellung (presentation), the separate faculties of presentation and situation are brought together in a legal dispute, where presentation must necessarily fall under situation because disputation is a form of situation: that is, presented instances are situated according to the legal dispute:

With Kant, a Darstellung is not a presentation but is instead a situation. This repression of presentation in favour of representation (situation) [the French représentation also carries the meaning of a legal complaint] is permitted and encouraged by the doctrine of faculties and, once all is taken into account, by a metaphysics of the "subject". Cases [the "given" in Kantian Darstellung] are not events but are writs of summons. The question of the there is, brought up momentarily in the guise of the types of sensibility, is quickly forgotten and replaced by the question of the what there is 173.

Thus, Kant makes the same distinction between presentation and situation as Lyotard and, thereby, he faces up to the question of the there is, but only to be subsequently driven to reject the distinction and to fall into metaphysical illusion: "The metaphysical illusion is to treat a presentation as if it is a situation. Philosophy of the subject lends itself to this illusion". According to Lyotard, Kant is led into error by his dependence on the subject to which presentations must be "given". The subject in Kantian critique is the site where the faculties enter into legal dispute and therefore, where all presentations

are necessarily situated by that dispute. For a subject the "given" can never be a presentation but only a situation:

The idea of a given (of an immediate given) is a way of greeting and censuring the idea of presentation. A presentation does not present a universe to somebody, but is: the occurrence of the (ungraspable) presence of that universe. A given is given to a subject who receives it and deals with it, to deal with the given is to situate it, to place it within the universe of a sentence 174.

[My emphasis]

Lyotard's philosophy of language enables him to avoid Kant's dependence on the subject where faculties wage their legal disputes. Instead of faculties, sentence régimes and genres of discourse come together in concatenation, and occurring sentences are not given to a subject but arrive, or "are there", in such concatenations or, rather, prior to concatenation. The "there is" or il y a is the mark of the presentation brought forth when a sentence occurs, and situation is the putting into relation of what is brought forth when another sentence concatenates with the sentence-occurrence. In Le différend, presentation does not require mediation through a subject; in effect, the subject becomes a situation of the instances brought forth with a sentence-

occurrence and is, therefore, no longer an essential part of presentation itself:

The universe presented by a sentence is not presented to something or to someone, to a "subject". The universe is there so long as the sentence is the case. A "subject" is situated in a universe presented by a sentence ¹⁷⁵.

This is where the ontological there is, or il y a, is introduced to the concepts of presentation and situation. The presentation brought forth with a sentence-occurrence is the there is. Further concatenations taking the sentence-occurrence as an instance then situate the instances brought forth by the there is. So, in order to give an ontological ground to the distinction of presentation and situation, Lyotard must give an ontological basis to the distinction between the there is and the situation of what there is in concatenation, that is, in time: "There is: time, the endless procession of sentence-occurrences to which there can be no exception".

Lyotard must demonstrate that ontological occurrence - the there is, the sentence-occurrence - cannot be an instant in time, or an instance in concatenation, and still be itself, the same occurrence. In this demonstration the division between the there is and the Is there? is made

clearer: at first, Lyotard studies the fall of the there is into time, but this approach leads him to a metaphysical conception of time which he rejects; therefore, he turns to an ontological study of the Is there? in concatenation in order to avoid any dependence upon metaphysical time and presence. Both distinctions, the there is from time and the Is there? from concatenation, must ground the distinction between presentation and situation in the philosophy of language. The first attempt at grounding this secondary distinction is developed when Lyotard discusses Aristotle's resolution of the paradox of the "now" given in time and as the origin of the measure of time. I will not, here, give a detailed account of his interpretation of time in Aristotle because this would involve an analysis far removed from my direct interest in the concatenation of sentences. Instead, I will take Lyotard's conclusion to his interpretation and demonstrate first, its relevance to time as concatenation and occurrence as there is, and second, how its limitations lead Lyotard into his ontological notion of the Is there? (Arrive-t-il?).

In the conclusion to his interpretation of Aristotle's study of time, Lyotard draws out a dual definition of the "now" or present moment in time. For Aristotle, if time is to be constituted of a sequence of instants before and after one another, then there must be an origin from which we can determine which instants are past and which instants

are future, that origin is the now. However, if the now is the origin from which past and future can be determined in time, then each time we refer to the now a new origin is given to the measure of time and the problem is: How do we know whether that origin is an instant in time? If it is, then each now is an instant and hence the same as any other. If it is not, then each now determines a different measure of time and no now is the same as any other. There is a paradox in thinking time as a succession of past and future instants because the origin from which past and future are to be measured must belong to the succession - if there is to be one time or Time - but, there is no way of determining whether that origin, the now or "now", is always a same instant and, therefore, whether it determines the same time each time it is referred to. It is the solution of this paradox that is of particular interest to Lyotard.

Aristotle escapes what Lyotard calls a "parachronism" by defining the now as: on the one hand, the same now (the "now") each time it is referred to; and, on the other hand, as a different or rather, as an individual now ("now") each time it occurs. The now given as the measure of past and future to which one refers is always the same now: an instant in time; "now" given as present, as what is "now", is always different and does not belong in time. The key distinction, here, is between reference in time and

occurrence outside time (outside chronological or "vulgar" time), it allows Aristotle to note a slip, or fall, of original time or of "now" as presence into vulgar time or into the now as instant. When the now as occurrence, "now", is referred to, it is no longer identical to itself but becomes an instant identical to any other; it is, therefore, impossible for "now" to be referred to and to retain its individuality qua occurrence. This last property will be exploited by Lyotard to demonstrate the distinction between the there is qua presentation and the there is situated in concatenation. When the there is is referred to, taken as an instance by a sentence other than the one that brings it forth, then it is no longer identical to itself - occurrence falls into concatenation in the same way as the now falls into "vulgar" time. This inscription of Lyotard's work into Aristotle's study of time is made apparent in the following quotes:

"As what it is this time", the now is taken as an occurrence, as occurrence. I would say: as a sentence-occurrence. [...]. There is there is, a sentence taken as occurrence, as what, which in truth is not the now but now. However, as soon as that occurrence is taken within the universe of another sentence (tō logō) referring to it as to an entity (to einai), then now becomes the now and can no longer be taken as what, as was the

case when it arrived. It undergoes the unavoidable alteration of diachrony and takes to a regimen of sentences 176.

[My emphasis]

Aristotle disconnects the diachronic operators at play in the universes of sentences from the occurrence of the sentence (the sentence-occurrence). The "actual" presentation cannot be presented and occurrence is forgotten when it is preserved (after), when it is anticipated (before), or when it is "maintained" (the now) [le maintenant] 177.

[My emphasis]

The inscription of the distinction between the there is as occurrence and the there is in concatenation allows Lyotard to ground the distinction elsewhere than in his philosophy of language. Thereby, the difference between presentation and situation, the root of the possibility of différends between sentences, différends between genres and legal différends, is guaranteed from outside the arbitrary definitions of régimes and genres. There is, though, a problem inherent to this inscription: Aristotle's argument depends upon a metaphysical distinction and cannot provide the ontologically necessary foundation to occurrence sought and required by Lyotard (because of the ontological nature

of his definitions of sentences and concatenation, see chapter IV). Now, as the original now outside vulgar time - the measured diachronic time -, is given a metaphysical presence in Aristotle's work, and only then does it fall, altered, into vulgar time. So, as Lyotard is well aware, the distinction between now as presence and the now in vulgar time is a metaphysical distinction, the very one deconstructed by Jacques Derrida in the essay "Ousia et Grammé" ¹⁷⁸, "This is still a metaphysical "reading" subordinate to the hegemony of presence, Derrida would say (see Margins, p. 73)". Lyotard accepts this point and recognises the same problem in his own text:

[...] they [sentences in concatenations] "have arrived", as Aristotle says of the "now". Presentation, however, is that a sentence arrives, "as itself" and as what, and then, the sentence is not in time. "Vulgar" time is within the universe presented by the sentence. But, there is no vulgar time, Derrida is right (see Margins, p. 59), or: there is only vulgar time, because the sentence is "vulgar" too ¹⁷⁹.

[My emphasis]

Thus, Lyotard finds himself in agreement with Jacques Derrida over the metaphysical nature of the privileging of presence before "vulgar time" in Aristotle. This is

because: if a now or a sentence is present, then it is already involved in the "vulgar" time of the concatenation of sentences, anything that is is a sentence and belongs to concatenations. No existent can stand outside sentences and concatenation. Lyotard must therefore distance his definition of the there is from Aristotle's definition of the now, only then will his distinction between presentation and situation stand up to Derridean scrutiny - the distinction must not depend on metaphysical presence. The there is of occurrence must not stand in relation to the there is in concatenation in the same way as now given as presence stands to vulgar time. Rather, the there is must become an Is there?, the question accompanying the occurrence of sentences in concatenation, that is, the advent of the sentence instead of its presence¹⁸⁰.

In the substitution of the Is there? (Arrive-t-il?) for the there is (Il y a) or, more precisely, in the confusion of the there is with the Is there?, Lyotard must retain the Aristotelian notion of the necessary difference between occurrence and reference to occurrence and also, preserve the correspondence between a sentence's presentation of its instances and the occurrence of the sentence given as an Is there? or there is. The satisfaction of these two conditions will ensure that the distinction between presentation and situation is grounded in Lyotard's ontology. If there is a necessary distinction

between occurrence and reference to occurrence, and if that distinction is reproduced in the bringing forth of instances and their subsequent situation, then the ontological ground to différends between sentences will have been established. The situation of the instances brought forth by a sentence through concatenation with a later sentence will be necessarily contingent and yet, necessary, because any reaction to the Arrive-t-il?, including silence, is a concatenation with the occurring sentence - "Concatenation is necessary, a concatenation is not":

The there is takes place and is an occurrence (Ereignis). But, it presents nothing and to nobody, it does not present itself, it is not present and it is not presence. A presentation put into sentences (thought) is missed as occurrence ¹⁸¹.

- Simply: one never knows what Ereignis is. A sentence in which idiom? in which régime? Tort is always to anticipate Ereignis, that is, to forbid it ¹⁸².

Even the legal différend ("tort") depends upon the ontological distinction between occurrence and the situation of occurrence in concatenation. Here, the full

implication of my thesis is realised: all Lyotard's presentations of the différend (legal, affectual, in a philosophy of language) have been shown to depend upon an ontological distinction. I will now show how that ontology contradicts the theories it is supposed to ground.

The first and most important function of Lyotard's ontology based on the Is there? is to maintain the distinction between the presentation brought forth by a sentence and later situations of that presentation. So that, in the light of the distinction, the wholly contingent nature of the concatenation of sentences is established and thereafter, the heterogeneity of régimes, the incommensurability of genres and the irresolvable nature of legal différends. For this function of the ontology to be fulfilled, the distinction between the sentence as Is there? and the sentence in concatenation must correspond to the distinction between presentation and situation. This is not the case. Presentation and situation are both properties of the concatenation of sentences, and the Is there?, used by Lyotard to represent the advent or occurrence of sentences, cannot serve as a representation of presentation as it is defined in his philosophy of language. First, I will demonstrate this difference between ontological advent and sentential presentation. Then, following Derrida, I will show how presentation is in fact

a property of concatenation and therefore, how it is a form of situation.

In earlier sections of this chapter, I outlined Lyotard's definition of presentation as the bringing forth of the four instances: addresser, addressee, sense and referent, in the occurrence of a sentence and within the universe presented by the sentence. Later, this presentation of instances was associated with the ontological definition of sentences as that which occurs, and with the representation of that occurrence in the expression there is: "The expression: there is, would be the mark of the presentation within a sentence". Note: it is important not to confuse the presentation brought forth in the sentence and a presentation presented within its universe because such a presented presentation would be a situation:

The presentation brought forth by a case-sentence [a sentence-occurrence] is not presented within the universe presented by the sentence (it can, though, be marked in the sentence, for example by: there is)¹⁸³.

I have already criticised Lyotard's presupposition that a sentence-occurrence brings forth, or can bring forth the four separate instances, insofar as such a

presupposition prejudices the form of the occurring sentences thereby inflicting syntactic constraints on supposedly undetermined ontological occurrences. Here, I am able to go a step further in my criticism and show how the sentence-occurrence, represented by the expression Is there? - in addition to there is -, cannot be described as bringing forth a universe or as a presentation of instances.

The following quote from Le différend illustrates the move I have described from presentation, through the ontological definition of sentences and the expression of the there is, to the question, Is there?:

In: Every sentence is, every sentence means: everything that arrives [occurs]; is signifies: there is, there arrives. However, there arrives is not that which arrives, as quod is not quid (or, presentation is not situation). Therefore, is does not mean Is there, and even less: Is real. Is does not mean anything, and designates occurrence "prior" to the meaning (the content) of occurrence. Designating and not designating occurrence because, in designating it, the is situates occurrence ("prior" to meaning) and therefore, occults nun in hustéron protéron (See Aristotle notice). Rather, is would be: Is there?

(the French il indicating an empty spot to be occupied by a referent) 184.

[My emphasis]

Thus, the ontological definition of the sentence as occurrence can be traced through to the question Is there? representing occurrence prior to concatenation (and time). This trace also implicates the distinction between presentation and situation and reveals the importance of Aristotle's study of the fall of "now" into time to Lyotard's ontological distinctions. The problem is: this association of the Is there? - the there is, "the case is: there is, it arrives. That is: Is there?" - with presentation does not hold. The definition of presentation in the terminology of the philosophy of language already constitutes an answer to the question Is there? and therefore, it is already a concatenation of the initial occurrence, that is, a situation.

This difference between the Is there? and presentation is encountered first where presentation is discussed in the context of occurrence defined as the question of being and non-being. Lyotard himself notes the difficulties involved in naming the occurrence indicated by the question Is there?: "any term is illusory, illusionist, in indicating it". To describe the question as an existent and, in particular, as a "presentation" is to reduce it to one side

of the dichotomy - to being as opposed to non-being, to presence in time or in concatenation as opposed to advent:

Occurrence, the sentence as what, as what arrives, is not a question of time, but a question of being/non-being. This latter question is called for by a feeling: it is possible that nothing may arrive. Silence, not given as a sentence in suspense, but as a non-sentence, a non-what. That feeling is the anxiety or surprise: there is something rather than nothing. As soon as the feeling is put into sentences, then the occurrence is concatenated, recorded and forgotten in the occurrence of that sentence which, in declaring the there is, binds it in comparison to its absence ¹⁸⁵.

[My emphasis]

So when Lyotard distances his work from Aristotle's dependence upon a metaphysics of presence, when he redefines the There is - too indicative of such a presence - into the Is there?, he breaks the association of presentation with ontological occurrence.

Although the instances brought forth through presentation and within a universe can be situated by further sentences concatenating with the initial sentence-

occurrence, the presentation is itself a situation: it brings forth specific instances in a specific form (as separate entities organised according to the régime of the sentence-occurrence). Lyotard's distinction between presentation and situation does not, therefore, find a basis in his ontology of occurrence, of the Is there?. It replicates Aristotle's privileging of the point of origin in time, that is, in concatenation. Instead of defining presentation as an occurrence in concatenation, as a situation of those sentences that came before it and as situated by those sentences coming after it, Lyotard plucks presentation out of concatenation. So that the concatenation of sentence-occurrences can be given as contingent due to the "abyss" dividing a sentence from its concatenation - the "void" separating presentation from situation. So that each genre regulating concatenation can be defined as incommensurable to any other genre. And so that différends, defined as conflicts that can never be resolved, can be given an ontological foundation:

The only insurmountable obstacle to face the hegemony of the economic genre is the heterogeneity of sentence régimes and of genres of discourse. This is because there is not "language" and "Being", but occurrences. The obstacle does not depend on the "will" of humans, in whatever sense it is taken, instead, it is

down to the différend. The différend that is re-born even from so-called litigations. The différend allows humans to situate themselves in unknown universes of sentences, even when they are not touched by the feeling that something must be put into sentences (For this is a necessity and not an obligation). The Is there? cannot be defeated by the will to gain time.

[My emphasis] 186

In the above quote - the last fragment from Le différend, its conclusion -, the différend, the incommensurability of genres, the law of concatenation, presentation and situation, are associated with ontological occurrence in order to express the resistance the différends offer against the economic genre, that is, against a single approach to occurrence. This resistance depends on the connection between, on the one hand, occurrence and the Is there?, and, on the other hand, situation, genres, concatenation and judgement. That link is effectuated through the linguistic concept of presentation: if presentation is the expression of the ontological Is there?, advent, or occurrence, then the connection between presentation and situation must be contingent, yet necessary, because whenever the Is there? is put into time, into concatenation, then it is no longer identical to itself and its individuality is lost. The flaw

in Lyotard's argument is that his link: presentation, is already a concatenation of ontological occurrence or advent. Presentation fixes the Is there? in syntactic and semantic frameworks through its definition as the bringing forth of instances in the form of the universe of a sentence (the semantic framework issues from the specific instances that must be brought forth, that is, the referents of the rigid designators belonging to the sentence).

The presentation and situation distinction at the heart of Lyotard's philosophy in Le différend does not have an ontological ground, but instead, it issues from the privileging of individual sentences over concatenation. To demonstrate that this privilege is a metaphysical prejudice in favour of the sentence as presence is beyond the scope of this thesis. I will, however, develop a short study of Jacques Derrida's alternative analysis of language, which demonstrates how present linguistic entities depend on their former and future situations for their realisation. This will show how presentation can be studied as a form of situation, both as a situation of the past and as situated by the future. I will start the study of Derrida's book Schibboleth by pointing out the connections between it and Lyotard's work in Le différend.

Like Lyotard's Le différend, Jacques Derrida's book Schibboleth is a study of the implications of the paradoxical relation of occurrence and time. Unlike Le différend, Schibboleth does not express that relation through a metaphysics based on the occurrence and concatenation of sentences; instead, Derrida considers the cause of Lyotard's opposition of presentation and situation by developing a set of connected tropes wherein time and occurrence play the major role in defining what is paradoxical in those tropes. It is their connection, or what the tropes have in common, that allows Derrida to allude allegorically to the key relation of time and occurrence or, more precisely, to the relation of occurrence and language. So, where Lyotard depends on the ontological distinction between presentation and situation, as it is given through the advent and concatenation of sentences (I have shown, above, that this distinction is in fact metaphysical in Le différend), Derrida uncovers the source of the distinction through allegorical studies of relevant tropes. This means that where Lyotard seeks to ground the possibility of différends in the relation of occurrence and concatenation, Derrida implies, allegorically, a different conclusion to the paradox of the relation of occurrence and language. The difference between the theory of différends and Derrida's conclusion lies, therefore, in the opposition of the metaphysical ground to

Le différend and the allegorical ground to Derrida's lesson given in Schibboleth.

At first sight, it would appear then, that Lyotard and Derrida's works have little in common: Where lies the link between an allegorical study and the philosophical search for apodictic foundations? In fact, the connection is in the topic shared by Le différend and Schibboleth: the source of intractable conflict between pragmatic parties. I will demonstrate this link through a list of the aspects Lyotard and Derrida share in their studies of the topic:

- 1) In Schibboleth, Derrida notes how the study of tropes around the question of occurrence and language leads to a new angle on the question of the transcendental schematism ¹⁸⁷. This consequence is the same as the one considered by Lyotard in his work on Kant's concept of presentation (Darstellung), as it operates in the transcendental schematism of the First Critique (I have outlined Lyotard's study earlier in this chapter).
- 2) The fundamental paradox raised by Derrida concerns the relation of the "now" as unique event and the "now" as a measure of time and therefore, in time ¹⁸⁸. This paradox rejoins Lyotard's work on Aristotle, where the opposition of occurrence and reference to occurrence

affords an effective model for the study of the occurrence and concatenation of sentences.

- 3) In the study of tropes around the paradox of the "now" in time, Derrida points out and investigates the relation conjoining that paradox and the problems of judgement and legality involved in the question of what is legal and what is outlaw. Here, Derrida follows a pattern similar to Lyotard's grounding of the legal presentation of différends in the ontological study of the occurrence and concatenation of sentences ¹⁸⁹. Note, also, that in this matter there are strong parallels between the work in Schibboleth and Derrida's study of legality in "Préjugés, devant la loi", the essay directly addressed to Lyotard and Kant on judgement (see my comments in chapter III) - Derrida makes this connection overtly in Schibboleth: "Remember Kafka's Vor dem Gesetz" ¹⁹⁰.

- 4) Like Lyotard, Derrida relies on the radical break, or discontinuity, between occurrence and language for the capacity to discount any sublation of differences in conflicts through an appeal to a dialectical resolution of oppositions (I will demonstrate, below, that this is the point where Derrida and Lyotard move further apart: in the justification and study of the abyss separating occurrence and concatenation). Again,

there are strong connections on this point between Lyotard's and Derrida's studies of Hegel's Phenomenology, Aristotle's Physics and Derrida's earlier work in Margins, as quoted in Le différend 191.

- 5) Lyotard's definition of the holocaust, represented in the name Auschwitz, is equally apparent in Schibboleth, albeit in a different form. Derrida also measures his study of conflict and legality against the yardstick of holocaustic annihilation and the "différend" between Jews and Gentiles 192.

Thus, through the study of the four tropes - dates and dating, circumcision, poets and poems, and schibboleths - Derrida studies the same topics or issues as those addressed by Lyotard in Le différend. What is of particular interest in the context of this thesis is that: in studying the topic through analogies, Derrida avoids the dependence on metaphysical presence which is, as I have demonstrated, the flaw in Lyotard's work. I will not investigate the consequences of this difference in approach because my sole concern, here, is to show how Lyotard's metaphysical tack is not the unique position that can be taken up with regard to the paradox of the "now", or of occurrence in language. Hence, I will conclude this short introduction to Derrida's position by citing the alternatives he offers to Lyotard's metaphysical statement,

his law of concatenation: "Concatenation is necessary, how to concatenate is contingent". These alternatives provide the basis for a study of the problems involved in the legal arbitration of conflicts of irreconcilable parties, in the same way as Lyotard's law is the foundation for the legal presentation of différends. However, it is important to remark on the essential difference between the two notions of basis and foundation at issue here. Derrida's basis is analogical, and does not entail any form of logical necessity; whereas Lyotard's foundation should provide ontological necessity - though, as I have shown in this chapter, this necessity cannot follow from his work in Le différend.

So as to illustrate the paradox of unique occurrence in time or in language, Derrida demonstrates the paradoxical nature of tropes corresponding to that more fundamental state. For example, he takes the trope of the date and of dating to show how each date is at the same a unique occurrence, unique by definition, and yet, how every date must be understood in time as linked to the events it commemorates, to the events it harks back to, and to future events it comes to announce. This double definition is summed up by Derrida through the expression "Either, or", where the date can be either one thing, or another, and yet it must also be both at the same time:

Either...or. This is not an alternative; the double demarcation of the date is not divisible. The phenomena do not contradict one another, they do not even stand side by side. That which is the same in any dating is brought together and constituted there. The possibility of reading and return, of the ring [l'anneau], of anniversaries and of preservation, the truth in a poem, its very reason and its essential raison d'être, its risk and its sense, are also its insanity¹⁹³.

Derrida turns to a further trope to clarify this dual nature of dates, their "madness". He shows how a date is linked to what it leaves behind once it becomes past, the trace of its occurrence is given through the trope of ash after fire¹⁹⁴. Like ash testifying to the presence of fire, poems and names, language, commemorate the passing of dates - the poem is taken as the paradigm of the trace of a date in Schibboleth, and the book is based around the poetry of Paul Celan. However, the trace of a date wipes out that which was unique in its occurrence and therefore, the commemoration or anniversary of a date is also its annulment (Derrida is playing on the ann prefix of the words anniversaire, anneau and annulation):

The annulment [the annulment of the return of that which cannot return] takes place whenever a date

inscribes its here and now in iterability; when a date is promised to a loss of its sense in the forgetting of its self. When it arrives only insofar as it wipes itself out ¹⁹⁵.

Thus, Derrida can offer an allegory to take the place of Lyotard's account of the loss of a presentation in its situation. "A date must be lost in order to be preserved" is an allegory for "A presented presentation is always a situation". From the second proposition, Lyotard deduces his law of concatenation: "Concatenation is necessary, how to concatenate is not"; Derrida, on the other hand, cannot deduce such a law, he can only allude to further tropes and allegories which explain the consequences of the paradoxical property of dates and dating. When the foundational proposition is only allegorical, then the laws that follow from it are no longer apodictic. However, Derrida's approach is an alternative to Lyotard's dependence upon the metaphysical presence involved in the definition of presentation - it is this metaphysical definition that contradicts Lyotard's claim to ontological necessity in his philosophy of language. Derrida is not obliged to supplement an ontological study with a metaphysical presence because, in working through allegories, he never has to define that which is as opposed to that which occurs ontologically:

If the date becomes readable, then its schibboleth [the schibboleth is another trope important to Derrida's argument] says to us: "I", [...], I am, I am but a cypher commemorating that very thing promised to be forgotten, destined, for a limited time, to become a name, [...], the name of nothing, "nobody's name", nom de personne: ash 196.

So, Lyotard's fall into metaphysics and the consequent failure of his ontological grounding of the philosophy of différends - where he tries to overcome the Aristotelian paradox of the "now" - is not a necessary fall; Derrida shows how other options are open to Lyotard. These do, however, involve a loss of the necessary, or apodictic status of Lyotard's claims on the status of différends. For example, Derrida can never prove that différends cannot be resolved equitably; and so, he can never prove that différends do actually occur 197.

Conclusion

This chapter completes the demonstration of my central thesis concerning the inconsistent nature of Lyotard's definitions of the différend in different philosophical approaches. I have shown how the grounding of the différend, given as a legal term and as a term from a philosophy of language, in an ontology is incompatible with the ontological definitions of sentences and concatenation in the philosophy of language. This is because the key distinction in Lyotard's ontology, the distinction between presentation and situation, is not ontological but is, in fact, metaphysical. There is, therefore, a contradiction between the ontological claims Lyotard makes in his philosophy of language - "All that is, is a sentence", "Concatenation is necessary, a concatenation is not" - and the metaphysical nature of the distinction that is supposed to ground those claims. This contradiction at the core or foundation of the philosophy of différends is fatal for the other definitions of the différend given in Lyotard's book because they too depend on that foundation. In the failure of his ontology, Lyotard must also suffer the failure of his legal presentation of différends: he cannot prove that legal différends, defined as irresolvable conflicts, do occur and can occur.

Chapter VI - The sublime

Introduction

In the same way as chapter II introduced the concept of a différend in the context of Lyotard's work leading up to Le différend, this chapter will show how his work after Le différend fits into, furthers, and corrects the philosophy advanced in that book. In order to establish the connection between Le différend and Lyotard's later texts, I will study the role of the sublime in the book and I will show the development of that concept in the essays following Le différend ¹⁹⁸.

The concept of the sublime is of particular interest in the contextualisation of Lyotard's philosophical work on the différend because it bridges the gap between that work and his extensive study of modern art ¹⁹⁹. In chapter II, I drew the parallels joining Lyotard's affectual statements on the end of speculative reason and his work on the crisis of representation in modern art. These parallels were apparent in Lyotard's early essay "Nés en 1925" and from my study of that essay, I pointed out the essential role played by a reflexion on art and aesthetics on Lyotard's

main philosophical theories. Given this privileged position of art in Lyotard's philosophy, it is remarkable that Le différend, unlike Discours, figure and Economie libidinale, does not further its philosophical analysis through a comparison with modern art and aesthetics. This omission is remedied when the role of the theory of the sublime in Le différend is seen in the context of Lyotard's work on the sublime in artists such as Barnett Newman. Through the sublime, Le différend is related to the essays written after it; the ideas advanced in those texts are given an extended philosophical context through their association with the philosophy of différends.

This connection of Le différend and later essays does not only give the later works a theoretical background, the development of the concept of the sublime also helps to correct and explain flaws and difficulties in the philosophy of différends. In demonstrating how an extension of the role of the sublime rectifies mistakes in Le différend, this chapter will go beyond mere contextualisation and will help to explain some of the issues raised in chapters III, IV and V of the thesis. This does not mean that any of the criticisms made in those chapters will be invalidated, rather, the study of the sublime introduces alternative solutions to the problems encountered and solved incorrectly in the philosophy of différends.

In particular, the theory of the sublime serves to explain how there can be a form of judgement sensitive to différends as opposed to the judgement blind to différends, the judgement of tribunals. In chapter III, I called the former of these judgements "adjudication"; in the sublime there is a solution to the definition of adjudication as able to recognise différends without an understanding of the reasons why the conflict in question is irresolvable. Further, the theory of the sublime can help in the explanation of Lyotard's definition of the occurrence of sentences, insofar as that occurrence is opposed to their situation in concatenation. I will show, below, that the occurrence of sentences can be justified in terms of the feeling of the sublime. Finally, in Le différend, Lyotard develops the idea of a politics sensitive to différends. This politics is given in opposition to the economic genre or "Capital", and the basis for such a politics lies in Kant's use of the sublime feeling of enthusiasm in his work on history and politics ²⁰⁰.

It is important to note that, although the sublime does appear in Le différend, the full exposition of the theory is not given in that book except in the context of Kantian enthusiasm. The role that can be played by the sublime in the definition of the legal différend and the sublime in the definition of occurrence is not given in Le différend. It is, however, outlined in some of the later

essays, notably, in "L'instant, Newman". Due to this omission, I will begin this chapter with an exposition of the aesthetic definition of the sublime as it relates to the occurrence. Only after this exposition will I consider Lyotard's work on the Kantian sublime as it relates to the judgement of différends and to the conflict of genres in politics. Because the main purpose of this chapter is to put Le différend in context, and because my main thesis has been put forward and fully defended in the previous chapters, I will not formulate an extensive critique of Lyotard's theory of the sublime. It is a theory that reacts to the failings I have uncovered in Le différend and therefore, it requires a study beyond the scope of this thesis. The lack of a definition of the sublime in this introduction is due to the complexity and diversity of Lyotard's understanding of the concept; for this reason, a complete definition of the sublime will only emerge gradually as the chapter develops.

Occurrence and the sublime

The possibility of explaining Lyotard's theory on the occurrence of sentences in terms of an aesthetics of the sublime, that is, in terms of an aesthetics based on a feeling or affect accompanying the occurrence of an aesthetic object, is revealed in two ways. First, his

account of occurrence in Le différend contains counters indicating the closeness of that account to the theory of the sublime developed in Lyotard's studies on art and in his work on the politics of différends. Second, in his studies of the sublime and occurrence in the works of painters such as Maccheroni, Arakawa, Buren and Newman, Lyotard returns to the philosophy of language proposed in Le différend in order to illustrate and explain these works. This relation of art criticism and philosophy of language has already been alluded to at the beginning of chapter V, where I mentioned Lyotard's appreciation of Le différend, in terms of Arakawa's paintings, in Lyotard's philosophical-autobiographical book Peregrinations: "Le différend (1983) tries to give an ontological and linguistic (or, better yet, "sentential", "phrasic") status to what Arakawa calls the 'blank'".

In La partie de peinture, first published prior to Le différend, Lyotard uses his philosophy of language and his sentence theory to explain the painting of Henri Maccheroni. Lyotard argues that, although the first merit of Maccheroni's paintings of series of simple figures in simple colors is in its break with an artist's obsession in the representation of something, the import of Maccheroni's figures does not only lie in the importance played by combinations of figures in the interpretation of his art. Because Maccheroni's figures have to be organised into

sequences and series, they do not have that simple relation to the artist's sensual representation of a subject matter (as in Cezanne's obsession with the Montagne Ste Victoire). Instead, the figures are like sentences from a limited language: their importance comes from the combinations into which they can be inserted. However, more fundamental, more "secret", than these combinations is the recognition of the uniqueness of each figure; it is this uniqueness that allows the figures to be combined in an infinite number of ways. The break with representation is made possible, not through the multiplicity of figures, but through each figure's individuality and through the impossibility of capturing that uniqueness through any number of combinations:

Despite the fact that each figure concatenates with other prior and posterior figures, according to the rules for the formation of series, the secret is that each figure is, not the first figure, but, each time, the only figure ²⁰¹.

So, Lyotard's appreciation of Maccheroni's painting borrows two aspects from his philosophy of language as it is given in Le différend. It takes the opposition of sentences as individual occurrences and in concatenation, and, more importantly, it exploits the heterogeneity of the sentence-occurrence and the sentence situated in

concatenation. From these properties of sentences, Lyotard suggests that Maccheroni is not intent on illustrating the multiplicity of linguistic combinations afforded by a postmodern, post-representative art, but instead, that he is alluding to the heterogeneity of figure and combination - the "void" between sentences and concatenations of sentences at the basis of such a multiplicity:

His [Maccheroni's] idea could be that in the sentence, the most common work of language, lies the secret sought by painting in its most extreme asceticism: to present, and nothing more. And, when he directs his plastic art towards language, he is not aiming at the gossip of the combination that cross-multiplies matrices of figures, but at the void from which a sentence tears, and thank to which it proposes the worlds it presents for an instant ²⁰².

In La partie de peinture, Lyotard establishes a connection between the occurrence of sentences and the occurrence of aesthetic figures. Furthermore, the paradox implicit to the advent or occurrence of a sentence is repeated in the occurrence of an aesthetic figure: there is a void separating the sentence or figure qua occurrence and their concatenation in chains of sentences or series of

figures. No rule can determine the concatenations to follow a sentence-occurrence, and no interpretation can capture the "secret" of each individual figure.

In assimilating sentences to aesthetic figures, Lyotard appeals to the concept of presentation as given in Le différend. The heterogeneity of the presentation brought forth by a sentence and later situations of that presentation ensures the uniqueness of each figure:

However simple a sentence may be, it must present. It presents one or many universes [...]. One or many strongly organised microcosms blossom out, their instances perfectly positioned, like the parts of a flower or a night sky. Their time-spaces, deployed in one stroke, are immobile, vanishing ²⁰³.

The vanishing, evanescent quality of presentation is the sole guarantor of the heterogeneity of occurrence and situation of occurrence. I have shown (in chapter V) that Lyotard cannot defend that evanescence and, at the same time, retain the definition of presentation as a bringing forth of instances. To call occurrence, the Arrive-t-il? in Le différend, a sentence or a presentation of set instances, is to reduce it to a situation and thereby, to lose its otherness or evanescence. This will always be true

of the semantically and syntactically well-defined sentences of Le différend, but, once the sentence is replaced by the figure, it may be possible to explain the necessary evanescence of occurrence or presentation and still retain the necessity to concatenate with occurrence, the necessity to situate presentations. It is not sufficient to demonstrate the heterogeneity of occurrence and concatenation, Lyotard must also demonstrate their necessary connection: every concatenation is a concatenation of occurrence; only in this way can he introduce heterogeneity to concatenation and thereby, introduce différends into law and politics.

The uniqueness of individual figures is not justified in La partie de peinture and therefore, it is necessary to turn to Le différend in order to find suggestions as to the role of the sublime in the definition of occurrence. For it is in the sublime that Lyotard will define figures impossible to capture, to represent in their uniqueness, yet, equally impossible to ignore: after the sublime, every reaction is a reaction to a figure and to the feelings generated by the figure, and yet, no reaction can be equal to that feeling. The clue in Le différend leading to Lyotard's later work on the sublime is in the feeling accompanying and prompting the question of occurrence - "Arrive-t-il?", "Is there?" -, a feeling of anxiety or surprise at the fact that something arrives rather than

nothing. The feeling making us aware of the fact that nothing could have arrived, no sentence, no figure, nothing:

Occurrence, the sentence as what, as what arrives, is not a question of time, but a question of being/non-being. This latter question is called for by a feeling: it is possible that nothing may arrive. Silence, not given as a sentence in suspense, but as a non-sentence, a non-what. That feeling is the anxiety or surprise: there is something rather than nothing ²⁰⁴.

[My emphasis]

In Le différend, the feeling prompts and is prompted by the occurrence of the presentation brought forth by a sentence. And, because presentation and sentences are well-defined, the feeling does not announce occurrence as something absolutely undetermined and heterogenous to the concatenations that include it. Where occurrence is associated with a sentence, the feeling introducing the sentence as a fact that cannot be ignored and that must be concatenated because it has been felt does not guarantee the heterogeneity of fact and concatenation. In work later than Le différend, Lyotard attempts to remedy this flaw by considering occurrence as represented through aesthetic figures rather than as a property of sentences.

After Le différend, Lyotard accounts for the feeling of surprise and anxiety accompanying occurrence in two different yet related ways. On the one hand, he associates the feeling with Freud's explanation of Nachträglichkeit, where the reaction to an event or an object far exceeds the rational explanations of the relation between the reaction and its cause. For example, in the case of a phobia, Lyotard accounts for the over-reaction by stating that it is the re-enactment of a more original shock:

The "too early" of a first shock to the system, which it does not feel, and the "too late" of a second shock where something is felt that cannot be withstood ²⁰⁵.

Thus, the feeling of anxiety and surprise accompanying occurrence would testify as to the original heterogeneity of occurrence and concatenation ²⁰⁶. On the other hand, Lyotard also explains the feeling by using the theory of the sublime from his work on avant-garde art and, in particular, on the painting of Barnett Newman. In this thesis, I will concentrate on the second of the accounts, because it is closer to Lyotard's notion of occurrence in Le différend. It is interesting, however, to note how Freud's explanation of Nachträglichkeit allows Lyotard to ground the heterogeneity of occurrence and concatenation in a feeling, while retaining a connection between the

immediate cause of the feeling and the original heterogeneity²⁰⁷. He cannot retain a similar link in the theory of the sublime.

The essays "L'instant, Newman" and "Le sublime et l'avant-garde", from the collection L'inhumain, contain the major part of Lyotard's assimilation of occurrence and the sublime. In those essays, the theory of the sublime is taken, not principally from Kant, but from Burke's A philosophical enquiry into the origin of our ideas of the sublime and the beautiful; the reason for this choice is strategic: Lyotard retains Kant's account for the explanation of the role of sublime feelings in the political realm, this role requires a different, or modified theory to the one developed around occurrence. When Lyotard uses the sublime from Kant's work he is referring to its function in the Conflict of faculties rather than in the Third Critique; he does, however, mention Kant in the context of occurrence and the sublime, when he states, in Le différend, that Kant's notion of presentation (Darstellung) is sublime if viewed according to Lyotard's interpretation of Darstellung: "In the sublime (and if Darstellung is understood following my reading here [in Le différend], Kant will always be right to the detriment of Hegel". This strategic manipulation of his interpretations of Kant on the sublime demonstrates Lyotard's mercenary attitude to reading other philosophers,

he exploits their theories insofar as they contribute to his own work. It is important, therefore, to judge Lyotard in the light of the coherence of his own argument and not according to the merit of his interpretations. In Le différend, interpretation is secondary to exploitation toward the ends of the book's project: to provide a firm foundation to the concept of a différend ²⁰⁸.

Lyotard uses Burke in order to associate a specific sublime feeling with a particular aesthetic figure, or mode of representation, so that their combination corresponds to the question of occurrence, Is there?, and to its relation to the heterogeneity of occurrence and concatenation of occurrence. According to Lyotard, the key to Burke's study of the sublime is: first of all, that the sublime is a feeling, and second, that it is complex, insofar as it mixes pleasure and pain. These feelings of pleasure and pain, combined in the sublime, are further qualified as "delight" and "terror"; delight comes from the suspension of a terror inducing threat, it is the feeling of negative pleasure that comes with the relief of menace; terror is the feeling of pain and fear felt when the subject is threatened by the loss or deprivation of something vital. After terror, comes delight, and the combination of the two leads to a sublime feeling:

For pleasure to mix in with that terror [the terror that comes from deprivation] to make up the sublime feeling, there must also be, writes Burke, a suspension of the threat leading to that terror. Hence, the threat must be held back, kept at a distance. That suspense, in the diminishing of a threat or danger, provokes a sort of pleasure which is certainly not positive but is instead a relief. This pleasure is still a deprivation, but a secondary one: the soul is deprived of the threat of loss of light, of language, of life. Burke calls this secondary deprivation delight and distinguishes it from positive pleasure ²⁰⁹.

The correspondence between the pleasure associated with the question "Is there?" in Le différend and Burke's definition of the sublime feeling is striking. Lyotard describes the former as anxiety or surprise (taken in the strong sense of astonishment) and also describes it as the "vertigo of the last sentence" - meaning the fear that there may be no more sentences - this corresponds to the terror and delight combined in the latter. Although it is not made explicit in Le différend, the feeling accompanying or prompting occurrence is a sublime feeling. This last remark is made more apparent once the connection between the sublime and occurrence is studied in the context of

L'inhumain. In the later book, Lyotard takes, without modification, the entire definition of occurrence first encountered in Le différend. Thus, occurrence is seen as the moment when an event - not a sentence, in this context - arrives but is not yet situated in a network of understandings, interpretations and meanings. This presence prior to presence is represented by the image of a thunderbolt, the actuality of which is only realised once it has vanished (Note that this image was also used in Le différend: "The thunderbolt happens, - it lights up and strikes in the void of night"). Lyotard classifies this occurrence as the paradigm among causes of the sublime: in the moment of occurrence there is the terror caused by the possibility of non-occurrence and the delight in the fact that something has occurred. These two, terror and delight, make up the sublime feeling that accompanies occurrence:

Sublime is the arrival of something despite the imminence of nothingness, something arrives, takes "place", and announces that everything has not come to an end. A simple "here", a minimal occurrence, is that "place" ²¹⁰.

A sublime feeling is associated with occurrence because of the terror caused by the possibility of non-occurrence and because of the delight caused by the suspension of that terror through the arrival of something.

When a sublime feeling is felt, occurrence is disclosed in its dual nature of being there, of arriving or happening, and of not arriving or happening - in Le différend this duality was given through the couple being/non-being. This nature is lost as soon as occurrence is situated, that is represented, given meaning or interpreted, because then, the possibility of non-arrival is lost: "Occurrence is the instant which "falls" or "arrives" unpredictably, but which, once it is there, takes its place in the network of that which has arrived". If something "has arrived", then there can no longer be a sublime feeling because, once the possibility of non-occurrence is lost, the feeling of terror caused by the threat of a deprivation of being is dissipated. Thus, the sublime feeling indicates the occurrence of something and not its presence; that which arrives after the feeling is not equivalent to that which was announced in the moment of sublimity. And therefore, the feeling of the sublime raises a question concerning being that can never be answered: "Is there?" as the question undermining all conceptions of what is and of what can be:

It is not a question about the sense or reality of what arrives, of what it means. Prior to asking oneself what it is, what it signifies, prior to the quid, one must "first" say - in a manner of speaking - that "it arrives", quod.

And, in a manner of speaking, arrival "precedes" questions about what has arrived. Or, rather, the question precedes itself because "arrival" is the question as event, and only "later" does it concern itself with the event that has just arrived. Occurrence arrives in the guise of a question mark "prior" to arriving in the guise of a question. It arrives is "first" Is there?, Is it?, Is it possible?. Only "later" is the point of the question determined: Does this or that arrive, is it this or that, is this or that possible? 211.

In L'inhumain, the feeling of the sublime undermines given meanings, interpretations and understandings insofar as once such a feeling is felt, these given beliefs are confronted with the impossibility of representing occurrence, the cause of the feeling. There is, therefore, always an aspect of uncertainty in all judgements following the experience of a sublime feeling. The sublime undermines the belief in speculative reason because it discloses the limits of reason when it is faced by occurrence. This in turn implies that avant-garde art, defined by Lyotard as sublime art, has the power to question, or generate questions concerning the spectator's beliefs and judgements:

The question mark in Is there? marks a halt. In occurrence, the will is undone. The task of the avant-garde is still to defeat the presumption of mind over time, and the feeling of the sublime is the name for that undoing [dénuement: destitution] 212.

[My emphasis]

The essence of the move from Le différend to the texts in L'inhumain is encapsulated in this questioning function fulfilled by the sublime. Where, in the earlier book, an ontological account of occurrence was designed to ground a necessary heterogeneity between all events and all judgements - between a sentence and any of its concatenations: "Concatenation is necessary, how to concatenate is contingent" -, in the later collection, the feeling of the sublime associated with avant-garde art provides the possibility of undermining or undoing any belief in the capacity of intelligence, or of the will, to be equal to events or to occurrence. The ground has shifted from occurrence to the feeling of the sublime.

This move from occurrence to the sublime avoids the criticisms I made against Lyotard's ontology and the metaphysical distinction he drew between presentation and situation. In chapter V, I noted how Lyotard introduced contingency to the concatenation of sentences by exploiting

the evanescent quality of occurrence. However, this was achieved by associating occurrence with the concept of the presentation brought forth by a sentence and thereby, the evanescent quality of occurrence was lost because it was fixed in rigid syntactic and semantic properties from Lyotard's definition of sentences. The theory of the sublime, on the other hand, does not fix occurrence; a sublime feeling suggests or alludes to the evanescence of occurrence, but it does not involve a universal definition or description of the nature of occurrence. The sublime is a feeling, and does not impose any structures on its cause, rather, it suggests limitations to the reason of the feeling subject. This suggestion of the limits of reason when faced by events alludes to the nature of occurrence as the universal state of events, it does not, though, fix occurrence in any way.

Once occurrence is separated from sentences and representation, and once it is only indicated through the feeling of the sublime, then, the indeterminacy of concatenation can no longer be a necessary property of concatenation. Instead, indeterminacy becomes a condition that can be revealed through the generation of a sublime feeling - when avant-garde art generates a sense of disorientation, of scandal and of lack of norms, for example. This sublime feeling, though, cannot form the basis for the necessary statements from Lyotard's

philosophy of language: it is not a feeling necessarily associated with universal causes, neither is it universally felt, it only applies to events incidentally, when some, and not all subjects go through a feeling of terror and delight. There is no justification for classifying particular events, or events in general, as sublime, their "sublimity" is limited to the times when their arrival or happening appears to generate a sublime feeling; such a generation is incidental, it is neither guaranteed to occur in all spectators, nor guaranteed to occur at all times. This insecure aspect of the sublime is made apparent once the progression of avant-garde art is noted: what is avant-garde today, may not be avant-garde tomorrow ²¹³.

The allusions, in Le différend, to the sublime feeling indicating occurrence demonstrate how the approach of the book must be altered; Lyotard cannot prove the necessary occurrence of différends, he can, though, offer an analysis of feelings or affects allowing the recognition of particular différends. This second option falls far short of the aims of Le différend as I have studied them in the earlier chapters of the thesis - to demonstrate the impossibility of just judgements in cases involving différends -, it does however, show the implications of Lyotard's analysis of occurrence in Le différend if the false distinction of presentation and situation is dropped: Lyotard has to take recourse to a study of feelings insofar

as they oppose rational judgement in the representation and reaction to events. This recourse is already present in Le différend where Lyotard studies the Kantian use of sublimity and the political ²¹⁴. In the next section, I will analyse that study and make more pointed criticisms of the theory of the sublime itself ²¹⁵.

The sublime in politics

In the introduction to this chapter, I mentioned a second function of the feeling of the sublime other than its role in the indication of occurrence. In this second function, the sublime serves in the explanation of how différends can be recognised. This problem, of the recognition of différends, arises in two distinct, yet related areas of Le différend: the philosophy of legal judgement and the philosophy of language. The legal presentation of différends encounters difficulties where a judgement capable of recognising différends must be distinguished from the judgement that leads to différends, the judgement of tribunals. In chapter III, I expressed that distinction through the opposition of the judgement of tribunals and "adjudication", the judgement sensitive to différends. Although I criticised that distinction, I also noted that Lyotard did not explain "adjudication". In this chapter, I will outline such an explanation in terms of the

feeling of the sublime. The philosophy of language from Le différend also requires a study of recognition, but this time, in terms of the conflicts, or différends, between genres of discourse. Lyotard uses his theory of the sublime to explain how an incommensurability of genres can be detected. Because genres generally correspond to social groups, their conflicts can be characterised as political, this is why I call the use of the theory of the sublime political in such cases.

The first remark to be made upon the use of the political sublime in Le différend is that its use in the legal presentation of différends is derivative from its use in the philosophy of language. This follows from my study of the relations of the different presentations of the différend in Lyotard's book, where I have shown, in chapters II and V of this thesis, how the claims from the legal presentation are grounded in the philosophy of language. The same pattern of dependency holds true for the role of feelings in the recognition of legal différends: the function of such feelings is only explained and justified in Lyotard's theory of the incommensurability of genres and the feeling of the sublime. Thus, in the legal presentation, the importance of feelings is mentioned, insofar as they form the basis for the possibility of the recognition or adjudication of différends, and yet their nature and their operation is left unexplained:

That which we ordinarily call feeling signals that state [the différend]. [...]. One must search hard to find new rules for the formation and concatenation of sentences that are capable of expressing the différend disclosed by that feeling [...] 216.

[My emphasis]

In the différend, something "asks" to be put into sentences and suffers the wrong of not being able to be at that moment. Then, human beings, who believed that they used language as an instrument of communication, learn through the feeling of pain accompanying silence (and the feeling of pleasure accompanying the invention of a new idiom) that language requires them to allow the institution of new idioms [...]. 217.

[My emphasis]

At this stage, Lyotard does not explain the relation between différends and the feelings of "pleasure" and "pain" leading to their recognition, it is possible, though, to recognise the conjunction of two opposed feelings that characterises the feeling of the sublime in the philosophy of language: the conjunction of Burke's "terror" and "delight" (see previous section).

When the legal différend is translated and explained in terms of the incommensurability of genres, then it is possible to account for the relation between the feeling of the sublime, the recognition of incommensurability and hence, the recognition of différends. Here, Lyotard does not use the theory of the sublime he took from Burke in order to explain occurrence, instead, he appeals to Kant's use of the sublime in his historico-political texts - rather than in the Third Critique or in the "Observations on the beautiful and the sublime". Where Burke's definition of the sublime is suited to its role in the indication of the evanescent quality of occurrence in general, Kant's theory employs the sublime in the validation of Ideas of reason, and is therefore suited to the role of the recognition of différends - this is at least Lyotard's interpretation of the two positions:

[...]. He [Kant] robs Burke's aesthetic of what I believe is its major stake: to show that the sublime is prompted by the threat that nothing more could arrive ²¹⁸.

And yet, where Lyotard requires a theory of the sublime to underpin his account of the recognition of legal différends and of the incommensurability of genres, he abandons Burke's sublime, linked to occurrence, and returns to Kant's use of the sublime in politics. The question is:

Why does Lyotard draw such a strong distinction between Burke and Kant? And why does he use Burke in the context of occurrence, and Kant in the context of the recognition of différends? After all, both theories depend on an overwhelming feeling caused by the conjunction of pleasure and pain, delight and terror, and in both cases the feeling indicates the occurrence of something that cannot be adequately represented, that is, the representation will never be equal to the occurrence, they are incommensurable. The distinction does not lie in the feeling, nor does it lie in the indication of the incommensurability of occurrence and representation of occurrence, instead, it issues from the "cause" or prompt leading to the feeling of the sublime. In Lyotard's interpretation of Burke that cause is in the nature of occurrence in general, its dual state of being and non-being that threatens the occurrence of nothing or non-occurrence: "prompted by the threat that nothing more could arrive". Whereas, in his reading of Kant, I will show that Lyotard believes the feeling to be prompted by the incommensurability of Ideas of reason and their presentation in imagination:

The imagination attempts to provide a given object as a whole in intuition, that is, to provide a presentation for an Idea of reason [...]. It fails, and thereby experiences its impotence. But, at the same time, the imagination also

discovers its goal: to accomplish harmony with ideas of reason through appropriate presentations²¹⁹.

In Le différend, Lyotard exploits two subtly different versions of the sublime, the first is not overtly expressed as a use of the sublime in that book but I have shown how it is developed as such in his study of Burke in the later work L'inhumain, the second is taken as a version of the Kantian sublime explicitly in Le différend²²⁰. I have shown that Lyotard's account of occurrence in Le différend is related to Burke's sublime in the previous section of this thesis, and I have also, in the conclusion to that section, considered the implications of this connection for the remainder of the argument of the book. So, now, I will move on to demonstrate how Lyotard's differentiation of two versions of the sublime indicates two faults in his work. The first is a repetition of the central thesis of my work concerning the inconsistencies between the different presentations of the concept of the différend in Le différend: I will argue that Lyotard has to introduce, subreptitiously, two inconsistent versions of the sublime because of the inconsistencies concerning his ontological presentation of the différend and his legal and political presentations of the term. Lyotard's ability to introduce, however covertly, two versions of the sublime is also an indication of the second flaw in his work - and, this time,

the fault is intrinsic to uses of theories of the sublime. I will claim as to the uselessness of such theories, at least in the spheres of ontology and politics, given the vexed nature of the relation conjoining the feeling of the sublime to its "causes", or prompts. This relation allows Lyotard to attribute the feeling of the sublime to, on the one hand, an indication of occurrence as being and non-being, and, on the other hand, to specific historico-political events testifying as to conflicts opposing incommensurable genres.

Prior to pursuing a critique of the theory of the sublime, there remains to answer my earlier question concerning the reasons for Lyotard's use of the sublime in a political role, as inspired by Kant, in addition to its role in the definition of occurrence, as inspired by Burke. I already began to outline such an answer, above, where I considered the role of feelings in the recognition of legal différends, that is, in the recognition of irresolvable conflicts through their adjudication (in my terminology from chapter III) as opposed to attempts at their resolution through the judgement of tribunals. This recognition of a legal différend depends upon "the feeling of pain accompanying silence (and the feeling of pleasure accompanying the invention of a new idiom)". In Lyotard's account of the différend it is important to note that the application of such an idiom, "capable of expressing the

différend disclosed by that feeling", is a judgement of a différend leading to new torts and thereby furthering the irresolvable conflict. Only the invention of the new idiom belongs to the moment of recognition or adjudication coupled with a feeling of pain such as, for example, the feeling accompanying the silence of survivors of the holocaust - a feeling that is ignored by "objective" tribunals represented, in Le différend, by the argument put forward by the revisionist historian Faurisson (see chapter III of this thesis): "the silence imposed upon the historian by the crime of Auschwitz is a sign for the common person". Thus, it is the sublime feeling of pleasure and pain that allows the recognition of a différend. And, once this recognition is acted upon, once the tort is expressed in a new idiom, the différend will be furthered through the creation of new torts.

The problem with this use of the sublime in Lyotard's legal presentation of the différend, as it is outlined above, is that it is both incomplete and inadequate. The feeling accompanying the recognition of the différend is neither comprehensively described, nor is its relation to the différend explained in terms of the definition of différends as, specifically, irresolvable conflicts. Lyotard's presentation is therefore incomplete until it is developed through a justification of the irresolvable nature of différends in his philosophy of language, and

until a comprehensive explanation of the relation of the feeling of the sublime to différends is given, also in the philosophy of language. It is not enough to state that a feeling of pleasure and pain allows for the recognition of irresolvable conflicts, the relation must be justified. Furthermore, the criticisms I made of the legal presentation in chapter III of this thesis invalidate the basis for Lyotard's application of a theory of the sublime, at least to that particular presentation. In chapter III, I demonstrated the artificiality of the distinction drawn between the judgement of tribunals and adjudication - this demonstration turned in part on a criticism of Lyotard's study of the legitimacy of Faurisson's position. Given that the application of the theory of the sublime depends upon this distinction, I surmise that such an application is inadequate until the distinction is defended further. This defence takes place in Lyotard's development of the concept of the différend in his philosophy of language. I will, therefore, pursue my study of the sublime in that philosophy, having taken note of the incompleteness and inadequacy of its use in the legal presentation.

As in the legal presentation of the différend, the role of the sublime feeling in the philosophy of language is linked to the recognition of différends. However, in this second case, différends are not defined as irresolvable conflicts but as the meeting of

incommensurable genres; what has to be recognised is the hegemony of a genre over another, where a tort must be caused that cannot be righted without generating further wrongs. Lyotard introduces this conflict of genres in two ways: first, from an analysis of Kant's work on history and politics; and second, from an analysis of the hegemony of the economic genre, or "Capital", over all other genres. The theory of the sublime is developed from the work on Kant and is then applied to the study of the hegemony of the economic genre (see chapters II and III of this thesis for an introduction to these terms). The central question to be answered through the theory of the sublime is, in both analyses: How can we recognise the meeting of incommensurable genres? Lyotard's answer is: When a sublime feeling indicates such an incommensurability. I will look first at the Kantian aspect of this answer and only thereafter, will I analyse the more properly Lyotardian use of the sublime:

The tort is expressed through the silence of feeling, through suffering. [...]. The tort that capital inflicts on sentences would thus be a universal tort. And, even if the tort is not universal [...], the silent feeling indicating a différend must be listened to ²²¹.

[My emphasis]

Although Lyotard's theory of the sublime and its role in the recognition of différends are taken from Kant, I will not, here, pass comment over the validity of Lyotard's interpretation, neither will I develop an analysis of Kant's original theory. These tasks would go beyond the scope of this thesis, which aims to judge the merit of Le différend as an autonomous philosophical essay rather than as a work of interpretation. My main interest in the connection between Kant and Lyotard lies in whether lessons learnt from the former can elicit the theories of the latter; I am already following one such lesson in studying Lyotard's selective appropriation of Burke and Kant according to the different circumstances in which he wishes to exploit their work, namely, in the realms of ontology and politics. In deference to the field of Kantian interpretation, it is sufficient to note that Lyotard is critical of Kant's theory insofar as it can lead to a teleological politics - so the sublime feeling becomes party to a system of just judgement -, for Lyotard, the feeling must only serve in the recognition of différends rather than in their resolution:

[...] that Begebenheit ["given", event, or "state"] of our time [the postmodern epoch] would induce a new type of sublime, more paradoxical than [Kant's] enthusiasm, and where one would not feel the irremediable gap between an Idea of

reason and that which comes forth to "realise" it. One would feel, instead, the gap between the different sentence families and their respective presentations ²²².

Put simply, Kant's use of the strong feeling, or "vigorous affect" (Geistesgefühl), of the sublime allows for a negative presentation of Ideas of reason in the imagination. Even though such ideas cannot, in theory, have corresponding intuitions in the imagination, in experience there are events which can, if not represent such ideas, at least validate them. Thus, an Idea of reason such as "the human race is in constant progress towards the better" cannot correspond to an intuition in the imagination, but, certain events can occur that so overwhelm the subject's powers of apprehension that an Idea of reason must be turned to in order to apprehend and understand the event. In the occurrence of events prompting a sublime feeling, the understanding is exceeded and in its place the subject must turn to reason and Ideas of reason for an explanation of the occurrence of the event and the feeling accompanying it. Therefore, although the event cannot be a presentation of the Idea of reason, this latter is validated negatively because it is to such an Idea that the subject is compelled to turn in order to explain the coincidence of a feeling of fear and pain induced by an event that does not actually threaten the subject - in this

sense the feeling of the sublime is beyond understanding and therefore cannot be explained through an appeal to the understanding. Furthermore, in addition to pain, a feeling of pleasure is induced in the subject when an Idea of reason is found to correspond with the event. This pleasure comes from the realisation of the purpose of the imagination to present intuitions corresponding to Ideas of reason. The sublime feeling resulting from a conjunction of pleasure and pain induced by an overwhelming (yet "safe") event validates Ideas of reason negatively; no presentation of the Ideas is given, the validation is therefore not positive, and yet the event and the feeling together are signs or indicators as to the validity of the Idea. The classic example of such a "sign of history" is the enthusiasm felt by distant spectators of the French revolution, their enthusiasm validates the Idea of reason stating the progress of humanity towards the better:

If the enthusiasm of the spectators is a probative Begebenheit [given] for the sentence stating the progress of humanity towards the better, it is because as an aesthetically pure feeling it requires a common sense, a consensus that is not more than an undetermined sensus, but still a consensus by right. It is an affectual anticipation of the republic ²²³.

There are two ways in which Lyotard uses Kant's argument as it is outlined above. The first is the one I have been studying throughout this chapter and is the use of the sublime for the recognition of différends. The second is the use of the sublime as the basis for a politics of the différend as it is outlined in Lyotard's introduction to his book: "[The stake of the book is] to build a philosophical politics away from the politics of "intellectuals" and politicians. To bear witness to the différend". In order to be in a position to bear witness, one must first have recognised the occurrence of the différend; and thus, the sublime feeling testifying as to a différend is the first step towards a politics sensitive to irresolvable conflicts. Note again that such a politics can never dispel the différend but only indicate its occurrence.

In Le différend, both of the uses of the feeling of the sublime outlined above are explained in a cursory and often paradoxical manner. I will now show how this awkwardness is due to weaknesses in the theory of the sublime itself. In fact, having stated the function of sublime feelings in the recognition of legal différends, Lyotard only goes on to study that function in the recognition of the incommensurability of genres through a single example: the conflict opposing the economic genre to the genres it exploits on the way to fulfilling its goals

concerning the increase in capital and the decrease in production time. What is more, at the end of the book, he renders the function of the sublime - and thereby the role and possibility of a politics of the différend - more complex and less effective in the recognition of différends by questioning the definition of the sublime. The accuracy of the definition is undermined through a taxinomic survey of the different forms of feeling covered by the definition:

Kant, after Burke, recognises sublime feelings other than enthusiasm. Notwithstanding respect, of course, and admiration, sadness [der Kummer], if it finds its foundation in moral Ideas, is also one of these "vigorous emotions" ²²⁴.

The import of these remarks upon the diversity of sublime feelings, feelings that involve a conjunction of pleasure and pain, where that pain is not directly caused by the occurrence of an object but rather, by the realisation of the inadequacy of the understanding in the comprehension of the occurrence - it is for this reason that the feeling is said to be disinterested -, lies in the way the diversity of feelings problematizes their validation of Ideas of reason. Lyotard is aware of this risk in Le différend (see quote above) but even more so in the later essay "L'intérêt du sublime". He concludes the

essay with a consideration of the diversity of sublime feelings listed by Kant, and he notes how their classification can resemble an anthropological taxonomy. The danger is, then, that through the sublime a non-critical survey might re-enter Kant's critical philosophy. If this is possible, then the sublime feeling cannot be a critical term associated with Ideas of reason and with an insufficiency of the understanding:

It [the sublime enthusiasm] has many brothers, a whole generation of other sublime individuals. I cannot, here, give the full collection in detail, not even the collection listed by Kant, "anger", "revolted despair", introspectivity, "sadness" or "chagrin", "[the soul's] imperviousness to danger", "humility", the just and free "admiration" of God, and not forgetting "duty, a sublime and great name". [...]. Given this variety, the demon of anthropological taxonomy is not far from taking over the critical spirit once again [...] 225.

[My emphasis]

The anthropological bias that can take over from the critical definition of the sublime is the basis for my first criticism of Lyotard's use of the Kantian sublime. The sublime feeling cannot serve in the recognition of

différends or of incommensurability between genres if the feeling is defined following empirical anthropological observations and classifications²²⁶. And yet, this is exactly the case in Lyotard's sole description of the role of a sublime feeling in the recognition of the incommensurability of genres: in his account of the hegemony of the economic genre. The problem posed by the possibility of empirical anthropological classifications of sublime feelings issues from the connections such studies draw between the feelings and their causes. These connections contradict the excess such feelings are supposed to command over the understanding, insofar as the generation of the feeling by events becomes explicable in terms of the understanding instead of Ideas of reason. And thus, the negative validation of Ideas of reason, that is, the indication of différends, is rendered inoperative by the existence of rational (in the understanding, i.e. cognitive) explanations of the arousal of such feelings.

For Lyotard, in his account of the economic genre towards the end of Le différend, Marxism "is not finished" because it witnesses and attempts to express in a new idiom the feelings indicating the hegemony of the economic genre over all others. The economic genre organises, manages all other genres according to a criterion of performativity - to increase capital in the least time possible; this

management ignores, even exploits the heterogeneity of genres:

Work is submitted twice to a rule of exchange [to achieve the exchange in the least possible time]. The conditions of work in a capitalist system all result from the hegemony of capital, where time must be gained. There is an irresolvable différend between work and gaining time. The feelings accompanying the so-called working conditions (sadness, anger, hate, alienation, frustration, humiliation) are born of, and indicate that différend ²²⁷.

[My emphasis]

The list of feelings given in this quote resembles the collection of "sublime individuals" blamed for the introduction of the "demon of anthropology" into Kant's critical philosophy - see Lyotard's comments in "L'intérêt du sublime" (above). Lyotard's list is as varied as Kant's and hence, it allows for the same criticism: the anthropological, empirical nature of the list indicates the presence of a non-critical survey within Lyotard's study. The feelings he has collated and defined as sublime are not necessarily so, and therefore, they do not necessarily indicate a différend. Although there is no doubt that a conflict is brought out by those feelings, nothing

guarantees the irresolvable aspect of the conflict. Such a guarantee could only result from the "disinterestedness" of the feelings, from the impossibility of explaining or fully understanding their relation to the conflict without appealing to an Idea of reason such as that the conflict is irresolvable, a différend. However, because of the diversity and empirical basis to Lyotard's list, the feelings can be, not only related among themselves in orders of intensity and closeness (a taxonomy), but also related to demonstrable causes themselves measurable and interrelated (unjust dismissal, inequitable pay structures, exploitative hours, no share in profits, distancing from executive decisions). Therefore, it is not necessary to posit an "irresolvable conflict" in order to explain sublime feelings, in describing them as part of a web of other feelings it is possible to offer a cognitive explanation of their arousal in line with the explanations given for less strong feelings. Anger, frustration and humiliation can be explained as well as - and this does not imply completely or even satisfactorily - discomfort, annoyance and irritation²²⁸.

In order to deflect this criticism of his use of sublime feelings in the recognition of différends, it is not enough for Lyotard to insist on the intensity of such feelings - for example, in "L'intérêt du sublime" and Le différend he follows Kant in stating that sublime feelings

must be "vigorous". A measure of intensity is again a benchmark for comparison and classification and therefore, it cannot ensure the particularly "disinterested", cognitively inexplicable quality of sublime feelings. Once such feelings issue from observation and classification they do not indicate irresolvable conflicts, différends or incommensurable genres; this is because there is a seamless progression from these feelings to less strong, less complex but more easily explicable ones.

The nature of feelings does not have to be fully understood for it to be possible to discount the radical break Lyotard posits between different kinds of empirically observed phenomena. Each time he describes a sublime feeling and claims that it is disinterested, that the connection between feeling and cause can only be explained through an appeal to the ideas of différends and incommensurability, it will be possible to counter that claim through a description, a taxonomy of those feelings and the myriad other feelings and sensations associated with the same cause and connected to it through sufficient cognitive explanations. As I have shown in considering the example of the feelings involved in the hegemony of capital, Lyotard can define sublime feelings as disinterested, but he cannot observe disinterested feelings. In this failure, there also follows the failure of a politics based on différends: if différends cannot be

recognised through sublime feelings, then the politics of the witnessing of différends has no material, no différends, no incommensurability on which to work. It is a blind politics, and hence, properly, a mute politics.

Conclusion

In this chapter, I have demonstrated the roles of two versions of the sublime in Le différend, a sublime based primarily on Burke and a sublime based primarily on Kant. A consideration of these versions separately led me to criticize the function of the sublime both in Lyotard's ontology, where Burke's sublime is not suited to grounding Lyotard's conception of the heterogeneity of presentation and situation, and in his politics, where a theory of the sublime taken from Kant fails to ensure the possibility of the recognition of différends through sublime feelings. This latter failure also implies the impossibility of Lyotard's politics based on testifying for différends. In addition to these criticisms specific to Lyotard's use of the sublime, I further connect the work in this chapter to my main thesis concerning the contradictions involved in the different presentations of the différend in Le différend. To wit, the contradiction between Lyotard's ontology and his politics is the source of his appeal to two different theories of the sublime; the first theory, taken principally from Burke, supports Lyotard's description of ontological occurrence; the second theory, inspired by Kant's historico-political use of the sublime, explains how particular legal différends and incommensurabilities between genres can be recognised. Lyotard is forced to use these two contradictory versions

of the sublime because, as I have shown in chapter V of this thesis, his ontology based on occurrence cannot ground the possibility of legal différends or différends between genres. And therefore, the feeling of the sublime linked to occurrence, to the question of being and non-being, cannot be defined in the same way as the feeling linked to the recognition of différends. The former should, but cannot indicate a universal property of the presentation of sentences; the latter should, but cannot indicate the existence of particular différends. These two functions cannot be reconciled in one theory and for this reason Lyotard is left with two contradictory versions of the sublime.

Chapter VII - Conclusion

Throughout this thesis, and more specifically at the end of each chapter, I have made pointed criticisms of Lyotard's different presentations of the différend, the key term in the philosophy advanced in Le différend. Some of these criticisms, for instance my analysis of Lyotard's dependency on Faurisson's deeply and offensively flawed argument about Auschwitz, stand as individual indictments of a particular presentation, in this case of the legal presentation of the différend. Others, for example my remarks on the distinction between the judgement of tribunals and adjudication (see chapter III), do not imply an irremediable flaw in a particular presentation but instead, they point to the reliance of one presentation on another. This reliance is then criticized from the point of view of the contradictions that occur when the two presentations are considered in conjunction, for example: where Lyotard's definition of ontological occurrence contradicts his definition of presentation in his philosophy of language. These latter criticisms compound to verify the initial main thesis behind my work, that is, that the different presentations of the concept of the différend depend upon one another and yet lead to

contradictions and inconsistencies when they are taken as complementary.

The two different types of criticism I make against Lyotard's work, criticisms specific to particular presentations and criticisms to be taken in the context of my overall hypothesis, imply two different types of conclusion. The specific points indicate problems that must be overcome for Lyotard's philosophy to present successfully the concept of the différend through the particular presentations he has chosen for the definition of the term. For example, the success of Lyotard's legal understanding of différends depends on his amending the work on Faurisson and the judgement of tribunals. As such, this type of criticism does not provide a platform for any general conclusions regarding Lyotard's philosophy. However, it might still be possible to take those specific points together in order to observe patterns or similarities in the problems encountered in Lyotard's philosophy. Such patterns could lead to more general conclusions, and I will therefore list those points and study their resemblances further down in this conclusion.

Criticisms taken in the context of my overall hypothesis, that is, criticisms related to the dependency and inconsistency of the various presentation of the différend, lead to more general and further reaching

conclusions than the specific points. Again, these general conclusions split into two types: conclusions concerning Lyotard's philosophy in Le différend as an attempt at defining différends; and lessons to be learnt from the problems he has encountered due to his multiple presentation of the différend. Thus, for example, the contradictions that occur when Lyotard's ontology is studied alongside his philosophy of language can suggest conclusions concerning the particular approaches taken by Lyotard, but these contradictions can also lead to more general conclusions on the topic of the conjunction of a philosophy of language and an ontology. The question is: Are the problems encountered in Lyotard's work intrinsic to his philosophy of language and ontology, or, are there more profound obstacles to attempts at grounding the validity of a philosophy of language in an ontology? In a more general version the question becomes: Do the contradictions and inconsistencies of Lyotard's philosophy of différends indicate any wider implications for any philosophy of radical difference and heterogeneity - in law, politics, language and ontology - and for any philosophy mixing multiple presentations of a central concept? Before I move toward an answer to this question, I will recall the more specific criticisms I made against Lyotard's work, lest these points reveal clues to the wider question of the lessons to be learnt from the verification of my initial main hypothesis.

For the purposes of my conclusion I will only retain the following specific criticisms of Lyotard's philosophy from the main body of my text:

- 1) Lyotard's use of points from the affectual background to his philosophy - his feelings and impressions on the topics of Auschwitz, on the hegemony of the capitalist economic system, on the violence implied by speculative reason, and on the material constraints inhibiting aesthetic creation and speculative reason - does not differentiate their legitimate exemplary and paradigmatic function from their illegitimate role in arguments about the universal and necessary status of différends. This criticism, formulated in chapter II and in chapters V and VI (in my discussion of Lyotard's study of the economic genre or "Capital"), questions the passage from particular events to universal concepts in Le différend; Lyotard does not take sufficient care to exclude subjective impressions - albeit powerful and carefully thought through impressions - from theoretical arguments serving to define the différend as a universal, necessary and absolute condition of judgement and the concatenation of sentences: wherever a sentence follows another there can be a différend, certain concatenations must lead to différends, when différends occur they cannot be resolved.

- 2) In the legal presentation of the différend (see chapter III), the definition of the category of the judgement of tribunals is ill-conceived and based on unsuitable criteria, most notably, in Lyotard's use of the Faurisson example and in the assimilation of the judgement of tribunals to cognitive forms of validation. In order to achieve a clear distinction between the judgement of tribunals and the judgement sensitive to différends (adjudication), so that the distinction can serve in the explanation of how legal différends arise, Lyotard gives a simplistic and incorrect account of the judgement of tribunals; this point is most apparent where I consider his use of Faurisson's logically false argument as a valid and representative form of the judgement of tribunals, and where I make the remark that tribunals can and do use criteria other than cognitive evidence (this remark was taken, in part, from Alain Badiou's work in "Custos Quid Noctis?").
- 3) The philosophy of language in Le différend is open to criticism for the prejudice the syntactic and semantic properties of names and sentences bring to Lyotard's ontological definition of sentences and the concatenation of sentences. This criticism arose both in chapter IV, where I considered his philosophy of language, and in chapter V, where I considered his

ontology and the concepts of presentation and situation. In the philosophy of language names are defined as rigid designators, sentences are given as linguistic entities capable of self-reference and of including names, and concatenation is defined as the linking of sentences through parataxis (where a sentence is appended to another by the conjunction "and"). However, in Lyotard's ontology the same concepts of sentences and concatenation are given ontological definitions and are associated with the concepts of presentation and situation, themselves concepts corresponding to his work on ontological occurrence. These latter definitions must leave the sense and syntax of sentences undetermined, so that once ontological occurrence is given as sentential occurrence no conditions allow occurrence to be fixed according to universal rules; similarly, there must be no rules for the concatenation of sentences, so that Lyotard can uphold his statement that concatenation is necessary but how to concatenate is contingent (see chapter IV). This cannot be the case if the restrictions from the philosophy of language are taken into account because, there, sentences and concatenation satisfy fixed syntactic and semantic properties. Lyotard's omission of a full elaboration of his philosophy of language, in the light of the work of philosophers of language from Frege to Kripke,

is symptomatic of the problems he encounters through those syntactic and semantic restrictions: the more precisions he brings to bear on the definition of rigid designators and sentences the more determined, and less plausible, his ontology will become. Lyotard's cursory and erroneous use of Descartes' method of doubt in the ontological definition of sentences is also indicative of this problem: it is possible to doubt the occurrence of syntactically and semantically well-defined sentences.

- 4) Lyotard's assimilation of the presentation brought forth by a sentence to ontological occurrence, and his assimilation of the situation of presentation through the concatenation of sentences to the representation of occurrence, does not guarantee the heterogeneity of presentation and situation - necessary for the validity of the statement "concatenation is necessary, a concatenation is not" (see chapter V). This is because his argument depends upon a metaphysical prejudice similar to Aristotle's distinction between original and "vulgar" time. As I have mentioned in the previous point, Lyotard must define presentation without determining ontological occurrence, however, I have shown (in chapter V) how the definition of presentation as the bringing forth of specific instances in a specific configuration constitutes one

such determination, and therein lies the metaphysical prejudice to undetermined occurrence. The ground for the heterogeneity of presentation and situation must be ontological rather than metaphysical because Lyotard makes ontologically necessary claims, that is, he defines a sentence as that which is and then claims that the concatenation of sentences is necessary but undetermined (contingent) (This criticism and the previous one can be seen as aspects of my general thesis, their specific element is in my emphasis on the particular mistakes made by Lyotard and indicating the correctness of the wider thesis; these mistakes are: the syntactically and semantically incomplete definition of names (rigid designators) and sentences, the misuse of Descartes' method of doubt, and Lyotard's metaphysical prejudice in his definition of the concepts of presentation and situation).

- 5) Finally, in chapter VI on Lyotard's use of theories of the sublime, I criticised his use of Burke's definition of the sublime towards the universal definition of occurrence; in fact, Burke's theory centres on a subjective feeling that need not be universal or be caused by the same event in all subjects. Furthermore, I criticised Lyotard's use of Kant's theory of the sublime in his politics, most specifically, in his description of the recognition of

the economic genre. Kant's account can be seen as an anthropological, taxinomic classification of sublime feelings, as such, it contradicts the critical role it must fulfill in Lyotard's politics (see chapter VI).

In the attempt to register similarities in the above criticisms, I note first of all that they have little in common in terms of their content, they do not involve discussions of a same problem in Lyotard's philosophy. This is unremarkable since the topics under consideration range over diverse and seemingly unrelated philosophical approaches and issues, from legal theories to theories of the sublime, and from the problem of post-holocaust philosophy to the problem of how to recognise absolute differences. For this reason, it is only when the form of the criticisms is observed, rather than their content, that similarities begin to appear. Most notably, the criticisms resemble one another in the type of flaw they detect in Lyotard's work, in the explanation of why those flaws arise and of why they can be difficult to detect, and also, in the possible solutions to the question of how those flaws and mistakes can be avoided.

In type, the flaws my criticisms have brought out share an element of expediency, there is a lack of thoroughness, an incompleteness to the theories leading to the faults in Lyotard's work: for example, in the way his

definition of names as rigid designators does not take full account of the historical background to the term (from Frege to Kripke), and in the way Faurisson's argument is crudely - but generously (it is taken as a valid form of argument) - analysed in Le différend. Lyotard's philosophy runs into difficulties over the very points it does not develop fully or accurately; this is most clear where the development of the foundational ontology in Le différend is restricted to a notice section of the book, the notice on Aristotle (see chapter V). However, it would be wrong to infer from this relation of fault and lack of development that the incompleteness of certain aspects of the philosophy leads to its flaws, on the contrary, the lack of an adequate exposition of particular theories merely indicates deeper faults in the work. The absence of Burke's theory of the sublime from Lyotard's ontology based, as I have shown (in chapter VI), on the sublimity of occurrence, and the appearance of that theory in the context of occurrence much later than Le différend in L'Inhumain, indicates the flawed nature of the ontology where a universal state, occurrence, is based on a subjective feeling, the feeling of the sublime. The metaphysical origin of Lyotard's ontology would have been easier to detect had the role of the sublime been developed in Le différend. And thus, a more complete exposition of Lyotard's theories only emphasizes the faults in his work - this is also why the faults can be

difficult to detect, because they are indicated by missing or incomplete aspects of the work.

As I have shown through the work in this thesis, the painstaking reconstitution of the omissions and incompletions of Lyotard's philosophy reaps remarkable dividends with respect to the criticisms that can be levelled against the philosophy. Lyotard's errors are divulged through his omissions, but, in themselves the omissions are not errors. So, there remains to answer the questions of how the flaws in Lyotard's work come about - given that the incompleteness of his philosophy is only a clue to those flaws -, and how, if at all, these faults or errors can be avoided. The answer to the first question was advanced first in the introduction to this thesis, it is my main hypothesis, and I have demonstrated its validity in the conclusions to chapters III, IV, V and VI. The deep-rooted cause of almost all the problems with Le différend is in the multiple presentation of the central concept of Lyotard's philosophy, the différend: the different presentations of the term depend upon one another, and yet, they lead to contradictions and inconsistencies when they are considered in conjunction. The legal presentation is grounded in the philosophy of language, where the statement of the irresolvable nature of legal différends is proven, and yet, the categories of the judgement of tribunals and adjudication (my term, see chapter III) from the legal

presentation entail severe contradictions in the philosophy of language, where the demand for specific heterogeneous entities corresponding to the legal categories (the cognitive, interrogative, prescriptive régimes) grounded in a universal property of sentences ("concatenation is necessary, a concatenation is not") leads to the opposition of a syntactic and an ontological definition of sentences. Similar effects can be registered when the affectual and legal presentations are conjoined, and when the intricate enmeshing of the philosophy of language and Lyotard's ontology is taken apart (see chapters III and V). This same conflict of ontology and philosophy of language appears again where I consider the problem of the recognition of différends through the feeling of the sublime (in chapter VI).

Given the above explanation of how the flaws in Lyotard's philosophy arise from the multiple presentation of the différend, the final question in this thesis becomes: Can the contradictions between the various presentations in Le différend be avoided? I will not, here, consider pointless answers to the questions such as suggestions for completely different approaches to the problem of différends or irresolvable conflicts. To suggest that Lyotard should have presented his philosophy in a single presentation, say in his ontology or his philosophy of language, would be to miss the point I made in chapter I

concerning the conjunction of philosophical issues and legal, social and political issues through the multiple presentations in Le différend. Furthermore, such suggestions render the work from my thesis redundant insofar as they do not take account of my study of the necessary, yet contradictory, relations between the different presentations. It is not possible to suggest that Lyotard abandon sections in Le différend in order to concentrate on others, each aspect of his philosophy depends on all the others in a necessary fashion. To ignore this is to ignore one of the most important lessons of my thesis: the presentations in Le différend are interdependent.

Thus, in the final conclusion to this thesis, I accept as the fundamental aspect of Lyotard's philosophy that it must involve a multiplicity of presentations of the différend: as a conflict irresolvable in law, as a necessary state of the concatenation of sentences defined according to Lyotard's philosophy of language, as the conflict between incommensurable linguistic genres, as an ontologically necessary consequence of the heterogeneity of occurrence and representation of occurrence, and as the state recognised through a sublime feeling that indicates its irresolvable or incommensurable nature. Furthermore, I accept the complementarity of these presentations; parallels can be drawn between the legal presentation, the

philosophy of language, the ontology and the affectual politics based on the sublime feeling - the key to the parallels is, of course, the concept of the différend itself. However, over and above this complementarity, Lyotard ascribes a necessity to the relation between presentations, this occurs because the central statement in each presentation - for example, "Concatenation is necessary, how to concatenate is contingent" - is grounded in another presentation. It is this necessity, the necessary hierarchy grounding Lyotard's affectual statements in his philosophy of law, his philosophy of law, in his philosophy of language, his philosophy of language in his ontology, and his ontology in his theory of the sublime, that makes the contradictions in Le différend, inescapable.

1. Ernesto SABATO, The tunnel, p. 130
2. Ernesto SABATO, The tunnel, p. 6
3. Ernesto SABATO, The tunnel, p. 131
4. There are many interpretations of Sábato's novel, other than the one given here there is also a Freudian interpretation, an existential interpretation, an interpretation that centres on Sábato's own abandonment of his career in nuclear physics, an interpretation of The tunnel as a nihilistic post-holocaust novel, ... the list is endless ... For further reference the reader can consult: Thomas C. Meehan, "Ernesto Sábato's Sexual Metaphysics: Theme and Form in El Túnel", Modern Language Notes, LXXXIII; Fred Petersen, "Sábato's El Túnel: More Freud than Sartre", Hispania, L, 2, 1967; and Beverly G. Gibbs, "El túnel: Portrayal of Isolation", Hispania, 45, 1961.

5. Ernesto SABATO, The tunnel, p. 138
6. I take La condition postmoderne and the book published in the same year, Au juste, as forming the watershed between Lyotard's early work and his later work based around Le différend and the essays that mark the stages in the development of the philosophy of language in that book.
7. This point is very important because the theory of différends depends upon the separation of names from objects and territories. See, for example, Lyotard's discussion of names and worlds at the end of "Judicieux dans le différend":

It is the civil war of language with itself. The critical scout observes that war, watching it and taking care of it. The name Palestine belongs to a number of worlds of names. In each of those, a number of regimens of sentences fight over the name Palestine.

C'est la guerre civile du langage avec lui-même. Le guetteur critique surveille cette guerre, il la veille et il y veille. Le nom de Palestine

appartient à plusieurs mondes de noms. Et, dans chacun de ceux-ci, plusieurs régimes de phrases se disputent le nom de Palestine.

[My emphasis]

"Judicieux dans le différend", p. 236

8. A history of Lyotard's legal terminology helps to reveal the bibliographical antecedents of Le différend. This is because the concept of justice is a recurring concern throughout Lyotard's work. Therefore, an analysis of the concept of the différend, in terms of justice establishes links between Le différend and Lyotard's earlier works through his many theoretical analyses of justice; as found in, for example, "Sur la force des faibles", L'Arc, n° 64.
9. In certain of the books and articles by Derrida and Nancy that I take into consideration as directly critical of Lyotard's philosophy, the reader will find that Lyotard is not mentioned by name or oeuvre. This refusal to focus on a particular subject-matter and instead, to work by analogy or parallel, is a feature of both Derrida's and Nancy's writing. Due to this difficulty I will take care in demonstrating the direct relevance of books and articles such as La

vérité en peinture. D'un ton apocalyptique adopté
naguère en philosophie. "Préjugés devant la loi",
L'impératif catégorique. L'offrande sublime and "Dies
 Irae" to a critique of Lyotard through the bias of the
 critique of Kant.

10. This interest in Kant is best shown by Lyotard's excellent book on Kant: L'enthousiasme. The book is a collection of most of Lyotard's work on Kant (passing the work on the sublime and sensus communis) and owes much to J.L. Nancy's reading of Kant and, to a lesser extent, to Derrida's work on the same topic.
11. See, for example, the work of Geoff Bennington (Lyotard writing the event) and David Carroll (Paraesthetics and "Rephrasing the political with Kant and Lyotard"):

Suffice it to say for now that if it is true that much of Lyotard's most vital thinking is carried out in some sense against Marxism, his pretention has never been that of refuting Marxism, but of showing that it is one way of thinking (genre of discourse), and its pretention to be the way of thinking [...] must be illegitimate. Various arguments around these themes will be presented in due course, but this general orientation may help to make some preliminary sense of the idea

that Lyotard is fundamentally a political thinker, to the precise extent that he contests the totalisations fundamental to most ideas of politics [My emphasis].

Lyotard writing the event, p. 9

I do not think that there is a deep, complicated, hidden reason that Lyotard chooses to phrase his position on the question of the political in terms a philosophy of phrases.

[My emphasis] "Rephrasing the political with Kant and Lyotard", p. 75

12. I refer, here, to the postmodernism debate that issues from Richard Rorty's "Habermas and Lyotard on postmodernity" and Jürgen Habermas's article in *New German Critique* n° 22.
13. This is the point I take from Derrida and Nancy (and also, possibly, Philippe Lacoue-Labarthe), see note 4.
14. See, Lyotard writing the event, introduction.
15. In my opinion, this remark is true of the philosophical cum philosophical political postmodernism debate. What I mean is that the debate is couched in political terms and along lines of allegiance to differing philosophical positions: I will explain how these allegiances are formed, debated and cashed out

in a discussion of Lyotard's position in those debates in chapter IV. At this stage, my position is that the debate has gone through many phases, confrontational, "ad hominem", reconciliatory, entrenched, national, etc..., without showing any signs of moving to a properly philosophical level of discussion - that is, where the terms used in the debate become defined in a manner independent of the factions in contest, instead of remaining focused around political, rhetorical terms such as "leftspeak", "neo-conservative" and the expression "postmodernism" itself (although Lyotard has often tried to give it an exact definition, notably in Le postmoderne expliqué aux enfants). The best example of this residual political content to the debate can be found in the latest stage of the discussion, as collated in Critique n° 493-494, where Richard Rorty and Jürgen Habermas pull back from the general debate to convene with those critics they define as their "best" opponents (i.e. least damaging and most politically close critics). Rorty finishes his paper by a truce offering based on the political exclusion of "brigands":

We social democrats, who are also intellectuals, must maintain a similar degree of flexibility in our own tactics. But this depends upon the distinction between empirical predictions and

philosophical interpretation remaining sufficiently clear. It also means that we must avoid Leftspeak, that we must not use Leftspeak to accuse one another of "complicity", and that we must be ready to join (instead of trying to rise above (dépasser, aufheben)) exoteric political discussions between those of our fellow citizens who are not intellectuals. Finally, this implies that we must treat brigands for what they are, brigands, and consider intellectuals as intellectuals, instead of fighting to associate a particular intellectual to a particular brigand.

Nous les sociaux démocrates, qui sommes également des intellectuels, devons maintenir le même degré de flexibilité dans nos propres tactiques. Mais cela implique que la distinction entre prédictions empiriques et interprétations philosophiques reste suffisamment claire.

16. In my analysis of this strain of critique particular to Derrida and Nancy I will mention critics that might equally well be classified in the categories 1) and 2) of approaches of Lyotard's work (see the text above). This anomaly is due to the point that, although they participate mainly in the debates upon the "political" or the "postmodern", certain

philosophers also exploit Derrida and Nancy's work (be that positively or negatively). This remark applies to David Ingram and Peter Dews in particular. In his "Postmodern Kantianism of Arendt and Lyotard" David Ingram uses Nancy's Kantian criticisms of Lyotard to make a political point on Lyotard's work in Le différend.

Peter Dews, approaching Lyotard's books from the Habermasian critique of postmodernism, returns to a political treatment of Lyotard's early books instead of furthering Habermas's reading of the The Postmodern condition (see Dews's work on Discours, figure (in "The letter and the line": Discourse and its other in Lyotard", Diacritics, fall '84) and L'économie libidinale (in "Adorno versus post-structuralism and the critique of identity" in New Left Review, May-June 1986)). However, Dews uses that work to support Habermas's position with regard to The postmodern condition, in a move that requires closer examination given the discontinuity within Lyotard's oeuvre.

17. Que peindre? Adami, Arakawa, Buren. Edition de la différence, 1987. In addition to his philosophical works, Lyotard has written many books and articles on art and artists such as Adami, Arakawa, Buren, Cézanne, Duchamp and Newman. He also organises collections and exhibitions of modern art, the biggest

of which was the innovative exhibition "Les immatériaux" at the Beaubourg center in Paris; for a critical, philosophical appraisal of that exhibition see John Rajchman's article "The postmodern museum" in *Art in America* (October 1985).

18. L'assassinat de l'expérience par la peinture, Monory, Flammarion, 1984.

19. Lyotard writes short polemical novels linked to ideas he is working on art criticism and philosophy; see, for example: Récits tremblants, Galilée, 1977, Le mur du Pacifique, Galilée, 1979, and Instructions paiennes, Galilée, 1977.

20. See note 14.

21. "Pierre Souyri: Le marxisme qui n'a pas fini", *Esprit*, January 1982. In this essay Lyotard explains his motives for breaking with the "Socialisme ou Barbarie" and "Pouvoir ouvrier" groups in terms of his work on the concepts of the différend and necessary heterogeneity. Lyotard's rupture with those groups was acrimonious, so much so that when an issue of the magazine *L'Arc* was devoted to Lyotard, *L'Arc* "Lyotard", 1976, not one of his former colleagues from "Pouvoir ouvrier" or "Socialisme ou Barbarie" accepted to contribute to that issue. To an extent that disdain was merited by Lyotard given his interesting

yet willfully provocative book Economie libidinale.
Minuit, 1974.

22. Pérégrinations, p. 17.

23. "Wittgenstein, après" in Tombeau de l'intellectuel.

24. Hans-Georg Gadamer, Truth and Method, Sheed and Ward,
1975.

25. "Nés en 1925", Les Temps Modernes, 1948.

26. Certaines valeurs se trouvent engagées pour combattre,
et surtout pour se justifier de combattre. De là
leur dégradation rapide. On sortira, de ce que le
XX^e siècle a fait de plus concret, la guerre, dans une
indigence monstrueuse. Nous avons 20 ans lorsque les
Camps nous vomissent ce qu'ils n'ont pas eu le temps
ou l'appétit de digérer. Ces visages creusés harcèlent
notre réflexion:

L'Europe y a assassiné son libéralisme, trois ou
quatre siècles de tradition gréco-latine.

"Nés en 1925", p. 2053

27. Note that this view of Lyotard's is far from original.
The status of reflexion and art after the holocaust is
the greatest challenge to all post-war thinkers and
most take it as the ultimate measure of their work.
Take, for example, the works of Hannah Arendt and

Primo Levi, or the thought of Theodor Adorno in Negative dialectics, where Adorno expresses similar doubts to Lyotard. Lyotard is fully aware of the general status of his remarks on Auschwitz and his statement must be taken as a reflexion on the situation of all post-war thinkers and not only on Lyotard's own work to the exclusion of others.

Lyotard is also aware of Adorno's books; he analyses Adorno's position vis-à-vis the holocaust and speculative reason in his essay "Discussions, ou: phraser après Auschwitz" in Les fins de l'homme, Galilée, 1981; "Après comporte une périodisation. Adorno compte le temps (mais quel temps?) à partir d'"Auschwitz"", p. 286.

28. Un nom [Auschwitz] qui désignerait ce qui n'a pas de nom dans la spéculation, un nom de l'anonyme. Et pour la spéculation, l'anonyme tout court.

"Discussions, ou: phraser 'Après
Auschwitz'", p. 286

29. A section of Geoff Bennington's book, Lyotard writing the event, Manchester University Press, 1988, is devoted to the problems of the examples of Auschwitz in Le différend.

Bennington follows through the importance of Faurrisson - a French historian of the holocaust (see

chapter III) - and Auschwitz for Lyotard's thesis on reality and différends. The merit of Bennington's work is to note how Lyotard implicates his treatment of reality in a philosophy of language with his central example of a différend, the différend between Jews and Nazis, through a link between Faurisson and Auschwitz. Bennington raises the following objection to Lyotard's strategy:

So if "Auschwitz" suggests, almost emblematically, that, the historian needs to be attentive to that which cannot be presented according to the cognitive genre, then, on this account, "Auschwitz" is the realest of realities" (L.D., § 93). As a sort of emblem, Auschwitz signals the limits of historical competence: but this limit is implied in the structure of "reality" in general.

How then can Lyotard maintain on the same page that "with Auschwitz", something new happened in history" (L.D., § 93)?

Lyotard writing the event, p. 148

Where Lyotard uses his paradigmatic examples within a theoretical argument the example becomes, paradoxically, a theoretical entity. The point

Bennington has made is that Lyotard's view of reality does not allow for degrees of injustice. Therefore, to retain the urgency of response to the différend at Auschwitz, Lyotard must supplement his linguistic account of reality by a theory of sentiment. Feelings become the key to the recognition of particular différends:

If "Auschwitz" is the name of a silence, a sentiment, then it is not simply a fact adequately dealt with by the cognitive. Lyotard would say it is a sign, and more specifically a "sign of history" [...].

Lyotard writing the event, p. 153

Bennington shows the tension implicit in Lyotard's dependence on emotion - or "sentiment" - within a philosophy of language that attempts to universalize the possibility of events that lead to the experiencing of such emotions. Lyotard grounds a practical experience in a theoretically necessary philosophy, yet claims that such an experience cannot be theorised:

The difficult status of such an event [a sign of history] is that it must apparently reconcile the différend between the cognitive and the

speculative, the claims of determinious and the claims of freedom.

Lyotard writing the event, p. 165

In chapters IV, V and VI of this thesis I will pursue Bennington's criticism.

30. Les noms qui sont ceux de "notre histoire" opposent des contre-exemples à leur [les philosophes de notre histoire] prétention. - Tout ce qui est réel est rationnel, tout ce qui est rationnel est réel: "Auschwitz" réfute la doctrine spéculative. Au moins ce crime, qui est réel, n'est pas rationnel.

[My emphasis]

Le différend, p. 257

31. En 18 l'Allemagne seule avait su saisir le sens de son chaos, et le nazisme, raidissement du capitalisme, a germé de l'horreur de ce chaos [...] au fond des systèmes totalitaires il y avait un désespoir. Et c'est en Allemagne que la tradition mécanique trouve son épanouissement; les Camps nous signifient jusqu'où conduit l'exploitation de l'homme si elle s'exaspère. Le XIX^e siècle et le début du XX^e siècle avaient associé dans leur histoire un certain libéralisme des échanges et spéculatif à un positivisme qui entraînait l'élimination de l'homme dans l'économie. Notre génération a vécu dans le mirage lent ou l'éclatement catastrophique de l'un et de l'autre.

"Nés en 1925", pp. 2054-2055

32. La grande affaire, c'est la terreur (ce n'est pas la guerre, comme le pense Kant), c'est le fait que le lien social, compris comme multiplicité de jeux très différents les uns des autres, avec chacun son efficacité pragmatique propre et sa capacité de positionner les gens à des endroits précis et de leur faire jouer des rôles, est traversé par la terreur, c'est-à-dire par la peur de la mort [...], la mort sous toutes ses formes: l'internement, le chômage, la répression, la famine, [...].

Au Juste, pp. 187-188

33. Les différends entre régimes de phrases ou entre genres de discours sont jugés négligeables par le tribunal du capitalisme. Le genre économique avec son mode d'entraînement nécessaire d'une phrase à l'autre écarte l'occurrence, l'événement, la merveille, l'attente d'une communauté de sentiments.

Le différend, p. 255

34. Le contrôle que la finalité du capital exerce sur les phrases occurrentes n'est certes pas nul, il est celui de la rentabilité, donc leur subordination à un enjeu qui semble être l'enjeu de tous les enjeux, "gagner", [...], gagner du temps, mesuré par l'intérêt calculé en monnaie.

Le différend, p. 201

35. Prior to Le différend, Lyotard's novel Instructions paiennes also depends on remarks and feelings that can be traced back to "Nés en 1925". In the novel Lyotard thinks through the implications of capitalist publishing for the production and publication of philosophy. He uses the example of the Nouveau philosophe Bernard-Henri Levy, a philosopher whose work is dependent upon his position as editor, "manager" and publicist of the books of more talented men under topical and opportunist banners. Lyotard notes that philosophy left in the hands of "B-H-L" (the name Levy uses for his press and television contributions) will become first and foremost subject to market pressures. The market and manager such as Levy will control the dissemination and interests of philosophy.
36. See, for example, Lyotard's books Les transformateurs Duchamp, Galilée, 1977 and Que peindre? (see note 12).
37. Acte coupé de sa fin, entreprise vidée d'ambition; entreprendre, agir sont valables par soi. Parallèlement, l'art abandonne la figure, la représentation noie le représenté, et Raphaël nous ennuie. L'objet subit le même procédé que le lieu des entreprises concrètes, et l'expression surréaliste

nous a habitués à des oeuvres dont la signification même se livre au hasard, c'est-à-dire où jamais l'homme ne fut plus libre.

"Nés en 1925", p. 2054

38. Et c'est sans doute la crise la plus grave que l'expression ait subie depuis longtemps: ne plus pouvoir dépasser sa matière, ne plus assigner un au-delà à l'événement.

"Nés en 1925", p. 2056

39. Le seul obstacle insurmontable auquel se heurte l'hégémonie du genre économique, c'est l'hétérogénéité des régimes de phrases et celle des discours, c'est qu'il n'y a pas "le langage" et "l'être", mais des occurrences. L'obstacle ne tient pas à la "volonté" des humains dans un sens ou dans un autre, mais au différend.

Le différend, p. 260

40. Note, how Le différend formulates a philosophy of language in order to process problems essentially outside that philosophy such as the problem of just justice. There is a tension in Lyotard's book between the theoretical study of language and the set of examples illustrating that study; this is because the examples form a coherent area of study all of their own: the notion of an unthinkable injustice. This

chapter serves to investigate the tension between the legal presentation of différends and their study in the philosophy of language.

41. In this chapter I retain the concept of "real" events as an adequate description of Lyotard's "occurring" events. In fact, the relationship between the "real" and the "occurring" is very complex in Le différend and I will explain the relation more fully in chapter IV.

42. See my treatment of Lyotard's idea of "Capital" in chapter II.

43. Le différend est l'état instable et l'instant du langage où quelque chose qui doit pouvoir être mis en phrase ne peut pas l'être encore.

Le différend, p. 29

44. Un genre de discours fournit par sa règle un ensemble de phrases possibles, chacune relevant d'un régime de phrases. Mais un autre genre de discours fournit un ensemble d'autres phrases possibles. Il y a un différend entre ces ensembles (ou entre les genres qui les appellent) parce qu'ils sont hétérogènes.

Le différend, p. 10

45. A la différence d'un litige, un différend serait un cas de conflit entre deux parties (au moins) qui ne

pourrait pas être tranché équitablement faute d'une règle de jugement applicable aux deux argumentations.

Le différend, p. 9

46. Je dirais qu'il y a différend entre deux parties quand le règlement du conflit qui les oppose se fait dans l'idiome de l'une d'elles alors que le tort dont l'autre souffre ne se signifie pas dans cet idiome.

"Le différend" in Tombeau de l'intellectuel et autres papiers, p. 29

Note the evolution from this quote in "Le différend" to the quote from Le différend, in note 6. In Lyotard's later book the concept of irresolvable conflicts has replaced the idea of singular unjust judgements. In Le différend far stronger claims are made than in the earlier works, it is these claims that put a heavy responsibility on the philosophy of language introduced in the book.

47. Dans le différend, quelque chose "demande" à être mis en phrase, et souffre du tort de ne pouvoir l'être à l'instant.

Le différend, p. 30

48. Au sens de la poétique, le genre est celui des Observations, Remarques, Pensées, Notes, relatives à

un objet, c'est-à-dire une forme discontinue de l'Essai.

Le différend, p. 12

I do not claim, here, that Lyotard's style is the sole cause of the clash between legal and linguistic presentations. In fact, the contrary is true, the style reflects the complex relationship between the philosophy of language and the consideration of justice. My remarks concerning Lyotard's chosen genre are meant to explain the difficulties involved in distinguishing the two related presentations of the différend within Le différend.

49. La vengeance n'a pas d'autorité légitime, elle ébranle l'autorité des tribunaux, elle en appelle à des idiomes, à des familles de phrases, à des genres de discours, peu importe, qui en tout cas n'ont pas voix au chapitre. Elle demande la révision des compétences ou l'institution de nouveaux tribunaux. Elle désavoue l'autorité de tout tribunal des phrases qui se présenterait comme leur tribunal suprême unique.

Le différend, p. 54

50. A la différence d'un litige, un différend serait un cas de conflit entre deux parties (au moins) qui ne pourrait être tranché équitablement faute d'une règle de jugement applicable aux deux argumentations.

Le différend, p. 9

51. Litige: terme de jurisprudence. Contestation en justice. "Il ajouta que ce qu'il demandait était conforme aux lois, qui ordonnaient que, dans un litige et avant le jugement définitif..." Vertout, Révol. rom., 54".

Littré

52. Damage. Terme de jurisprudence, dommages et intérêts, ou dommages-intérêts, somme allouée à quelqu'un pour l'indemniser d'un préjudice.
Plaignant. Celui qui porte plainte en justice.

Littré

53. Un tort serait ceci: un dommage accompagné de la perte des moyens de faire la preuve du dommage.

Le différend, p. 18

54. S'il n'y a personne pour en administrer la preuve, personne pour l'admettre, et/ou si l'argumentation qui la soutient est jugée absurde, le plaignant est débouté, le tort dont il se plaint ne peut pas être attesté. Il devient une victime.

Le différend, p. 23

55. Celui qui porte plainte est écouté, mais celui qui est victime et qui peut être le même, est réduit au silence.

Le différend, p. 25

56. J'aimerais appeler différend le cas où le plaignant est dépouillé des moyens d'argumenter et devient de ce fait la victime.

Le différend, p. 24

57. Faire droit au différend, c'est instituer de nouveaux destinataires, de nouvelles significations, de nouveaux référents pour que le tort trouve à s'exprimer et que le plaignant cesse d'être une victime. Cela exige de nouvelles règles de formation et d'entraînement des phrases. [...] Tout tort doit pouvoir être mis en phrases.

Le différend, p. 29

58. Dans le différend quelque chose "demande" à être mis en phrase, et souffre du tort de ne pouvoir l'être à l'instant. [...] C'est l'enjeu d'une littérature, d'une philosophie, peut-être d'une politique, de témoigner des différends en leur trouvant des idiomes. [...] Il faut lever ces négations silencieuses.

Le différend, p. 30

59. [...] Le tribunal fait prévaloir ce régime et/ou ce genre sur les autres, et, en transcrivant dans son idiome l'hétérogénéité des phrases en jeu dans le social et son commentaire, il fait nécessairement tort aux autres.

Le différend, p. 203

60. En montrant que l'entraînement d'une phrase sur une autre est problématique et que ce problème est la politique, ériger la politique à l'écart de celle des "intellectuels" et des politiques. Témoigner du différend.

Le différend, p. 11

61. Celui qui dit qu'il y a quelque chose est le plaignant, il doit en apporter la démonstration, au moyen de phrases bien formées et de procédure d'établissement de l'existence de leur référent. La réalité est toujours à la charge du plaignant.

Le différend, p. 23

62. "J'ai analysé des milliers de documents. J'ai inlassablement poursuivi de mes questions spécialistes

et historiens. J'ai cherché, mais en vain, un seul ancien déporté capable de me prouver qu'il avait réellement vu, de ses propres yeux, une chambre à gaz". Avoir vu "réellement de ses propres yeux" une chambre à gaz serait la condition qui donne l'autorité de dire qu'elle existe [...].

Le différend, p. 16

63. Here, my position is at odds with the argument advanced by Geoff Bennington in Lyotard writing the event. Bennington agrees with Lyotard's interpretation of the Faurisson example, and is prepared to accept Faurisson's argument as a challenge to positivist historians:

Positivist historians are at the mercy of a Faurisson if they imagine that justice consists solely in the application of cognitive rules in such cases. If history were merely a question of such rules, it is hard to know how Faurisson could be accused of injustice.

Lyotard writing the event, p. 148

I believe this view trivializes the Positivist historical position, whose cognitive rules amount to far more than the maxim: "To see with one's own eyes".

Other cognitive criteria, such as the logical consistency of a historian's investigative method, are applied to measure the validity of historical claims. To deny this is to give Faurisson unwarranted credence, a mistake with serious implications for both Lyotard and Bennington.

In rendering the cognitive genre as a strict application of rules of correspondence between reality and interpretative statements it is too easy to instigate categories of events outside cognitive verification. Having followed Lyotard's lead on the Faurisson case, Bennington also allows the example of Auschwitz to fall outside the realm of cognitive analysis:

So if "Auschwitz" suggests, almost emblematically, that the historian needs to be attentive to that which cannot be presented according to the rules of the cognitive genre, then on this account, 'Auschwitz is the realest of the realities'. As a sort of emblem, Auschwitz signals the limit of historical competence: but this limit is implied in the structure of 'reality' in general.

[My emphasis]

Lyotard writing the event, p. 148

I will show, in the rest of this chapter, how the restriction of the cognitive genre and the situation of events outside that genre, leads to false categories of judgement based on the distinction judgement of tribunals/adjudication. Geoff Bennington accepts the validity of those categories too readily due to his favourable reception of Lyotard's account of Faurisson and the Positivist cognitive position in general.

64. Le silence ne signale pas quelle est l'instance niée, il signale qu'une ou des instances sont niées. Les survivants se taisent, et l'on peut entendre (1) que la situation en question n'est pas l'affaire du destinataire; ou (2) qu'elle n'a pas lieu; ou (3) qu'il n'y a rien à en dire; ou (4) que ce n'est pas l'affaire des survivants d'en parler. Ou plusieurs de ces négations ensemble.

Le différend, p. 31

65. "Custos Quid Noctis" appears in Critique as a review of Le différend. It is, however, no ordinary review; Alain Badion gives an extensive and careful reading of Lyotard's book. It is common practice in Critique to

present essays as reviews although they develop themes closer to the reviewer than to the book at hand. Furthermore, Badiou, like Jean-Luc Nancy and Philippe Lacoue-Labarthe (also considered in this chapter), has a particular interest in the themes tackled in Le différend. His own books, Peut-on penser la politique? and L'être et l'événement, study the question of just judgement in the face of unpredictable events or occurrence.

In his book on liberty L'expérience de la liberté, Jean-Luc Nancy sums up the common interests of himself, Lacoue-Labarthe, Badiou and Lyotard as "the concern in a just measure of the incommensurable". The quote aptly expresses the motive behind all these authors' incisive criticisms of one another's works. They recognise their common philosophical background and political preoccupations and are therefore able to pursue a debate on a common topic at a very high level. The quality of that debate justifies my use of their work as a unified critique of Le différend, rather than as a set of disparate criticisms coming from disparate philosophical positions.

66. Tout se joue pour lui [Lyotard] dans la question du référent comme pour le juge, spécialement

anglais, qui entend établir de façon réglée à quel fait sont assignables les énoncés des parties.

"Custos Quid Noctis", p. 860

67. [...] La pesanteur de la métaphore juridique s'étend à la définition, par Lyotard, de la connaissance (des phrases du genre cognitif).

"Custos Quid Noctis", p. 861

68. Je dis que les phrases mathématiques à elles seules - mais, à mon avis, toutes les phrases dont l'enjeu effectif est la vérité - falsifient cette définition du cognitif. Ce qui fait que le "il y a" de la pensée mathématique ne se gouverne sur aucune procédure d'établissement d'un référent réel.

"Custos Quid Noctis", p. 861

69. L'épistémologie de Lyotard reste critique (juridique). [...]. Elle ne s'oriente pas selon le bon paradigme.

"Custos Quid Noctis", p. 861

70. [...] six philosophes examinent ici comment juger quand la loi manque. L'occasion leur en est donnée par les écrits de l'un d'eux, Lyotard, lors d'un colloque à Cerisy en 1982. Le présent titre ["La faculté de juger"] fait allusion à Kant.

La faculté de juger, verso

71. Tout un devenir-moderne et post-moderne de la pensée, de l'art ou de la politique comportait comme un de ses traits spécifiques de se présenter lui-même avec l'allure d'un pur "constatif", sur le mode d'une espèce de nécessité infra-hégélienne. [...]. On constatait le destin ou la dérive de l'époque. On décrivait un effondrement, ou une fragmentation, des dispositifs, des branchements, des désirs ou des plaisirs. Lyotard a rappelé que tout cela impliquait jugement - et aux deux sens possibles de l'expression: cela comportait déjà jugement, et cela exige qu'on juge.

"Dies Irae" p. 10

72. [...] dans cette scène de notre époque, cette scène de la modernité qui croit en avoir fini avec l'époque classique du jugement, celle où la

philosophie du jugement fait autorité, de Platon à Hegel, Jean-François Lyotard viendrait nous dire: attention, je vous arrête, il y a paradoxe, et telle est la signature post-moderne, en effet le jugement n'est ni fondateur ni fondé, il est peut-être secondaire mais c'est pour cela même qu'il n'est surtout pas question de s'en débarrasser; et, si vous croyez vous en défaire, il ne vous laissera pas en paix de sitôt.

"Préjugés. Devant la loi", p. 97

73. Les "jurisconsultes" nomment "déduction" la preuve qui répond dans une cause à la question "Quid juris?". La déduction est l'établissement du droit; la déduction transcendantale des concepts purs de l'entendement doit établir le droit de la raison dans tous les cas.

"Lapsus Judicii", p. 56

74. Lyotard met en jeu des ressources kantiennees - ou une ressource kantienne fondamentale - pour répondre à une question qui n'est pas kantienne.

"Dies Irae", p. 12

75. Lyotard entend tenir à l'écart le motif du

"fictionnement" qui relève, selon lui, d'une problématique du fondement et de l'origine. Que Kant renverse, avec le jugement, la problématique de l'origine "au bénéfice de la question des fins". [...] Il ne s'ensuit pas que la fiction juridique joue le rôle de substitut ou de suppléance d'une origine disloquée, et par conséquent reconduise subrepticement la thématique métaphysique générale de l'origine.

"Lapsus Judicii", p. 59

76. [...] je me refuse à faire pencher, à l'instar de Nancy, les modes et les manières de la présentation du côté de la "figuration" ou du "fictionnement". Il me semble, [...], que ces termes relèvent d'une problématique du fondement ou de l'origine.

L'enthousiasme, p. 18

This quote and the quote under note 36 do not make sense if the reader takes account of the dates of publication of L'enthousiasme and "Lapsus Judicii". However, the work in Lyotard's book was completed long before its publication and, by his own admission, dates back to 1981 (having appeared in Rejouer le politique edited by Nancy). In fact, Lyotard's and

Nancy's works on Kant are contemporary and part of the studies of the "Centre de recherches philosophiques sur la politique" organised by Nancy and Philippe Lacoue-Labarthe. From this information, I conclude that Lyotard and Nancy's analyses of Kant owe much to one another and are, to a certain extent part of an ongoing dialogue between the two philosophers. This thesis is supported by the note on page 148 of Nancy's L'expérience de la liberté published in 1988: "The thematics of this paragraph must be read with Lyotard's interpretation of Kant's Begebenheit in mind [...]".

77. C'est justement la consistance propre et l'auto-legislation des sciences qui les qualifient comme modèles [...]. Mais la raison ne s'y trouve pas comme telle, pour cette raison; elle doit dès lors les juger. Tel est le sens proprement juridique de la question critique: "Quid juris?". Elle ne signifie pas qu'il fasse légitimer les sciences mais de donner figure à la raison.

"Lapsus Judicii", p. 51

78. Kant, Critique of Practical Reason, trans. T.K. Abott, Longmans 1963, p. 119.

79. L'impératif catégorise son destinataire: il affirme sa liberté, lui importe le mal, et le destine ou l'abandonne à la loi.

"Le kategorien de l'excès", p. 31

80. La justice, dès lors, est de ne jamais dire la loi - une loi pour tout langage, la terreur. Et le seul et paradoxal prescriptif universel "prescrit d'observer la justice singulière de chaque jeu [de langage]".

"Dies Irae", p. 13

81. [...] le premier principe n'engendre pas nécessairement le second, par exemple la particularité peut fonctionner, comme si elle était une totalité.

"Dies irae", p. 16

82. [...] l'indétermination se joue donc, non pas dans l'assignation de la particularité, mais dans la nature du jugement lui-même.

"Dies Irae", p. 16

83. Pourquoi nous jugeons et comment juger ne sont

donc pas deux questions aussi dissociées que Lyotard le laisse entendre.

"Dies Irae", p. 27

84. For a different reading of Jean-Luc Nancy's work on Lyotard see David Ingram's article: "The postmodern Kantianism of Arendt and Lyotard" in The review of metaphysics, Vol. XLII, n° 165. In an approach similar to the one given in this chapter, David Ingram uses Nancy's reading of Kant and Lyotard to criticize the latter's definition of judgement. However, in my opinion, Ingram oversimplifies Nancy's argument by reducing it to a remark on Lyotard's confusion of determinant and reflective judgement:

[...] by prescribing very determinate boundaries to the prescriptive and descriptive language games of morality and science respectively he may have confused (so Nancy argues) determinant and reflective judgement.

"The postmodern Kantianism of Arendt and Lyotard", p. 71

As I have shown, Nancy argues against Lyotard from the point of view of judgement seen as a fiction or poiesis obliged by the Kantian Categorical Imperative;

I believe this argument goes beyond a simple confusion of reflective and determinant judgement. Without the more complex account of Nancy's work it is difficult to see where his discussion of Lyotard's principle of plurality can find its justification. Furthermore, Ingram sees Nancy's argument as "decisive" in its criticism of Lyotard's theory and its "lack of centeredness and discrimination". I find that conclusion very difficult to accept given the common ground Lyotard and Nancy share in their interpretations of Kantian judgement, and given Nancy's stated intention to follow and discriminate Lyotard's work:

Lyotard judges that we judge and that we must judge. I judge alongside him - this means more than recognising the importance of his work or agreeing to certain of his propositions. I share and discriminate [partage - au sens le plus fort du mot] in the statement of his judgement.

"Dies Irae", p. 10

Lyotard juge que nous jugeons, et que nous devons juger. Je le juge avec lui - et cela signifie plus et autre chose que reconnaître l'importance d'un travail ou que souscrire à certaines de ses

propositions. Je partage - au sens le plus fort du mot - la motion de ce jugement.

85. Or pour saisir la "révolution" kantienne dans le programme qu'elle n'affiche pas, il faut arriver à phraser ces "passages" [les passages entre aires de légitimité] autrement que comme des suppléances destinées à conjuguer les fragments d'une origine, Etre ou sujet, disloquée.

L'enthousiasme, p. 18

86. Dans l'instant insaisissable où elle joue la loi, une littérature passe la littérature. Elle se trouve des deux côtés de la ligne qui sépare la loi du hors-la-loi; elle divise l'être-devant-la-loi, elle est à la fois, [...], "devant la loi" et "avant la loi". Avant l'être-devant-la-loi [...].

"Préjugés. Devant la loi", p. 134

87. Les discours sur la peinture se destinent peut-être à reproduire la limite qui les constitue, et quoi qu'ils fassent quoi qu'ils disent: il y a pour eux un dedans et un dehors de l'oeuvre. Une série d'oppositions vient ensuite de celle-ci qui

n'est d'ailleurs pas forcément première (elle appartient à un système dont la bordure elle-même reconduit le problème).

La vérité en peinture, p. 16

88. Toute l'analytique du jugement esthétique suppose en permanence qu'on puisse rigoureusement distinguer entre l'intrinsèque et l'extrinsèque. Le jugement esthétique doit porter proprement sur la beauté intrinsèque, non sur les atours et les abors. Il faut donc savoir - présumé fondamental du fondamental - comment déterminer l'intrinsèque - l'encadré - et savoir ce qu'on exclut comme cadre et comme hors cadre.

La vérité en peinture, p. 74

89. As noted in the conclusion to this chapter, Lyotard's dual definition of the différend leads to two distinct presentations of his philosophy of judgement. I distinguish the strict philosophy of language from the legal presentation of différends. In this chapter I have shown how the critical distinctions necessary for the consistent legal (or outlaw) definition of the différend - the distinctions between the justice of tribunals and adjudication, the legal and the necessarily outlaw - are both arbitrary and

inaccurate. For this reason, I will proceed, in the next chapter, to a study of the philosophy of language independent of legal tropes and distinctions in judgement. I claim that Lyotard must deduce the necessarily irresolvable nature of différends from that philosophy (the arbitrary legal presentation cannot do this).

A critical theorist who does not see the need for the distinction I draw above is David Carroll. Carroll - in his essay "Rephrasing the political with Kant and Lyotard: From aesthetic to political judgements", in *Diacritics*, Fall 1984, and in his book Paraesthetics, Methuen, 1987 - does not separate what he calls Lyotard's "sentimental" and "analytic" strokes. Instead, he claims that Lyotard's legal definition of a différend, which requires an affectual motion for its recognition, is complemented by the linguistic or phrasic definition working on a pure analytic categorisation of sentences:

What could be called the "coup analytique" is continually countered in his [Lyotard's] work by the "coup du sentiment", both of which are contained or, rather, do battle in the term différend itself. For the différend is, at one and the same time, a kind of limit case of the

analytical and the affective I...]. The aesthetic supplements the historical-political and the theoretical in general in his work as a means of pushing the theoretical beyond itself in pursuit of what it cannot capture or present, that is, conceptualize.

Paraesthetics, p. 183

Thus, Carroll is aware of the difference between Lyotard's use of legal tropes and his philosophy of language. He is not prepared, though, to accept that the two are distinct. On the contrary they complement one another in a "battle" of "limit cases". I am deeply worried by this notion of complementarity based on a "pushing of the theoretical beyond itself". What can this mean? The theoretical does not supplement the aesthetic, it is the foundation for absolute claims Lyotard makes in the definition of a properly aesthetic realm; if the aesthetic already "pushes the theoretical beyond itself" the theoretical cannot perform this foundational function. If aesthetic feelings are not given a theoretical basis, then there cannot be a distinction between feelings that are caused by a wrong reparable before a court, and feelings bearing witness to différends outside equitable legal resolution.

90. Philippe Lacoue-Labarthe makes a similar point in his essay "Où en étions-nous?", in La faculté de juger. Lacoue-Labarthe argues that Lyotard's conception of judgement is dependent on the exclusion of any judgement based on what is proper or essential to a case. In using such an exclusion Lyotard must define what is proper to two types of judgement, he thereby falls foul of his own exclusion of judgement according to the proper. "Tu es victime de ce que tu exclus" (You are the victim of that which you exclude) is Lacoue-Labarthe's somewhat unkind yet accurate statement of Lyotard's quandary.

In "Où en étions-nous?" Lacoue-Labarthe is criticising Lyotard's book "Au juste", but his criticism applies equally well to Le différend. In the effort to do justice to victims of the judgement of tribunals, Lyotard makes victims from the application of his own judgement. Although Lyotard parries this point in part, by defining the différend as irresolvable through justice - only a particular tort and a particular victim of a différend can be done justice to, the différend itself cannot be resolved: what Lacoue-Labarthe implies is that the system Lyotard has constructed for the recognition and righting of tort is itself a source of différends:

You [Lyotard] rehabilitate the mimesis condemned by Plato: not only are you subjected to the same overall determination as his interpretation of mimesis (that is, its submission to mimetical constraints), but you also find yourself involved in a thought based on discrimination and criteria, that is to say a thought of justice based on the catharsis of language games, or if one prefers it, the properness of sentences. You find yourself dependent on an insistence of the proper [...].

"Où en étions-nous?", p. 189

Tu réhabilites la mimésis condamnée par Platon: non seulement tu subis la surdétermination de son interprétation de la mimésis (c'est-à-dire de sa propre soumission à la contrainte mimétique) mais tu te retrouves avec une pensée de la discrimination et du critère, c'est-à-dire avec une pensée de la justice, fondée sur la catharsis des jeux de langage ou référée, si l'on préfère, à la propriété des phrases. Tu te retrouves avec une exigence de propriété [...].

In referring to mimesis in Plato and to language games or sentences, Lacoue-Labarthe highlights two reasons for Lyotard's quandary. The first reason is of

literary provenances; pedagogical examples and metaphors bring extraneous constraints to the terms they serve to illustrate - this is a mimetic problem, the imitation of forms of discourse independent of the form and content of the discourse one seeks to illustrate, alters both that form and content. The second reason is that in the attempt to restrict the play of creative, pedagogical mimesis, Lyotard is forced to set down what is proper to the language games and sentences he uses in his system (this is the case for the régime of cognitive sentences; see my work on Alain Badion, above). I have not furthered my analysis of Philippe Lacoue-Labarthe's work because Jacques Derrida makes the same points in a more generally applicable approach. This is no coincidence, both Nancy and Lacoue-Labarthe owe much to Derrida's books and teaching.

91. In Des dispositifs pulsionnels: "Petite économie libidinale d'un dispositif narratif: La Régie Renault raconte le meurtre de P. Overney".

92. In Rudiments païens: "Expédient dans la décadence".

93. In La condition postmoderne.
94. The accompanying texts to Le différend are usually included in the book in part or as a whole; they are: "Le différend", "Introduction à une étude du politique selon Kant", "Discussions, ou: phraser "Après Auschwitz"", "Logique de Lévinas", "Judicieux dans le différend", "Wittgenstein, après" and L'enthousiasme. Other texts could be added to this list, I have restricted it to texts directly quoted in Le différend.
95. In Le différend, necessity replaces conjecture, Lyotard states and grounds necessary laws in the domains of language, justice and politics; the book, therefore, marks a move from criticism to critique in his work. Furthermore, Le différend must be understood in the line and context of Kantian critique and its definition of the legitimate realms of pure reason, practical reason and judgement. In the propaedeutic work to his book, Lyotard made a series of careful, yet innovative readings of the Critiques and of Kant's political writings (in "Introduction à une étude du politique selon Kant", "Judicieux dans le différend"

and L'enthousiasme), this work is included in Le différend. (Note: Although L'enthousiasme was published after Le différend, in fact it was finished prior to 1984 - see the preface to L'enthousiasme).

96. Statements such as "Concatenation is necessary, a concatenation is not" indicate the importance of the philosophical studies leading to them within Le différend. Thus, from the statement quoted above I begin to deduce that the concept of concatenation in Lyotard's philosophy of language must provide the basis for the notions of necessity and contingency in Le différend. A less decisive factor is given through Lyotard's own appreciation of his work; quotes such as "A report on knowledge" (La condition postmoderne), "A metaphysical blow" (Economie libidinale) and "My philosophy book", "The mode of this book is philosophical, reflexive" (Le différend) direct the reader to the status accorded by the author to his books. Of course, my interpretation of Lyotard's stated intentions can only point to a direction of enquiry, which must be defended through a close analysis of the texts (this is the practice of my thesis).

97. Lyotard is one of the first and most important philosophers to theorise the emergence of a specifically postmodern - fragmented, teleologically paradoxical, reflexively self-criticising - trait in art, architecture, politics, science and philosophy. In addition to his seminal book La condition postmoderne, see his work on artists such as Duchamp, Adami, Arakawa, Buren, Newman and the composer John Cage; see also his work as curator of the postmodern art exhibition "Les immatériaux" (reviewed in John Rajchman's "The Postmodern Museum", Art in America, October 1985, and discussed in Paul Crowther's article "The Kantian sublime, the avant-garde and the postmodern", in New formations n° 7) and his articles on the respective roles and duties of philosophy and politics in Tombeau de l'intellectuel and Le postmoderne expliqué aux enfants.

98. The writing of Le différend fits this remark concerning the presentation of Lyotard's ideas through narrative and rhetorical expositions; this is how Lyotard describes the genre of his book:

Genre: In the sense of poetics the genre is that of Observations, Remarks, Thoughts, Notes, all

relative to an object, that is: the discontinuous form of an essay. A sketch book? The thoughts are organised numerically and grouped into sections. The series of numbers is interrupted whenever necessary by Notices: reading notes on philosophical texts. However, the book is to be read in order.

Le différend, pp. 12, 13

Genre: Au sens de la poétique, le genre est celui des Observations, Remarques, Pensées, Notes, relatives à un objet, c'est-à-dire une forme discontinue de l'Essai. Un cahier de croquis? Les réflexions sont disposées en une série de numéros et groupées en sections. La section est interrompue selon l'opportunité par des Notices, qui sont des notes de lecture de textes philosophiques. Mais l'ensemble est à lire à la suite.

The question of whether such a genre clashes with a critical philosophy is too vast to be answered here as a general point, although one of the main themes of my thesis is to address Lyotard's plural presentation of his topic. Suffice it to say that strong disagreements exist over the merits of the combination of genre and argument in Le différend:

La condition postmoderne and (even more) Le différend use and abuse that which one could call the enumerative-alluding style, accumulating examples which have, most of the time, only an analogy between them and no direct link to the real question at hand [...].

Jacques Bouveresse,

Rationalité et Cynisme, p. 128

La condition postmoderne et plus encore Le différend usent et abusent de ce qu'on pourrait appeler le style énumératif-allusif, qui procède par accumulation d'exemples n'ayant entre eux, la plupart du temps, qu'une analogie extrêmement vague et souvent aucun rapport direct avec ce qui est réellement en question.

Compare the above quote to the one below (- Are they discussing the same book?):

[In Le différend] you will find an accurate and demonstrative style that follows its argument tenaciously. There is the will to carefully examine all possible objections and the plot of the demonstration is even tighter due to its clarity.

Alain Badiou "Custos Quid Noctis",
Critique, November 1984, p. 851

Vous avez là (in Le différend) une prose probe et démonstrative, qui suit son fil avec opiniâtreté. Une volonté d'examiner avec soin les objections possibles. Une trame d'autant plus serrée qu'elle est limpide.

99. The two mistakes mentioned in the text are made together or individually by commentators according to the purpose of their criticisms: malevolent or benevolent. It is the debate ensuing from the works of Richard Rorty and Jürgen Habermas that I am addressing here. The words malevolent and benevolent classify their motives for discussing Lyotard's work (in particular, La condition postmoderne and "Réponse à la question: qu'est-ce que le postmoderne?"). Rorty is benevolent insofar as he wishes to ally himself to Lyotard's opposition to the dominance of grand narratives. Habermas is malevolent in his attempt to exploit a criticism of Lyotard's work in order to advertise his own philosophy as the only consistent position (both morally and rationally) to take vis-à-vis the conservative nature of postmodern society.

The Lyotard-Habermas-Rorty 'debates' have led to further comments following these initial encounters. The essays by Gérard Raulot and Seyla Benhabib in *New German Critique* n° 33 and Christopher Norris in The Contest of faculties are typical of these after-shocks of the initial clashes, they merely replicate the mistakes made by Rorty and Habermas without questioning the political motivations behind their criticisms. I will now point out and explain the patterns formed by some of these seminal mistakes and stenciled arguments. Take, for example, the following quotes:

Habermas rejects the consensus view of truth entailed by Lyotard's pragmatist outlook.

Christopher Norris, *The Contest of faculties*, p. 17

Here, Norris is defending Habermas's error of interpreting Lyotard as an anti-theory and hence "pragmatical" philosopher, and thereafter branding him as a "conservative":

This conservative ideology has clear affiliations with Lyotard's idea of naturalized narrative pragmatics. It also brings out the very marked political implications of any such wholesale,

This conservative ideology has clear affiliations with Lyotard's idea of naturalized narrative pragmatics. It also brings out the very marked political implications of any such wholesale, deliberate retreat from the claims of rational critique.

Idem, p. 24

In Le différend, Lyotard marks a deliberate return to rational critique and, in particular, to the definition of legitimate realms as presented in Kant's Critiques. Lyotard's critical work and his interpretation of Kant's critical philosophy has been systematically ignored or denigrated by Habermas, Habermasians (except Emilia Steuerman in her essay: "Habermas vs Lyotard. Modernity vs postmodernity?" in New formations n° 7) and Christopher Norris:

One major plank in Lyotard's argument is a strong misreading of Kant (to put it charitably) which ignores every protocol of reasoned exposition in order to prove the rhetorical, essentially pragmatist cast of ethical dictates.

Deconstruction and the interests of theory, p.196

Once Lyotard is marked down as a pragmatist, Habermas and Norris (and Rorty for that matter) claim that he is therefore anti-ideology and anti-system. I hope that the content of this chapter alone is enough to demonstrate the presence of systems in Le différend; as for the identification of system and ideology: it does not follow that the lack of one unified system implies the absence of ideology, there can be an ideology of disparate, even conflicting systems - although Norris does not agree:

For Gadamer, there is finally no escape from the circle of tacit or intuitive fore-knowledge that makes interpretation possible. The same line of argument underlies Lyotard's claim that first-order narrative 'explanations' are all that we can reasonably hope for, given the failure (as he sees it) of other, more ambitious systems of thought.

The Conflict of faculties, p. 27

Lyotard's version of narrative pragmatics leads him to formulate what is, in effect, an 'end of ideology' thesis. It takes for granted the existence of a broad-based consensus on what makes sense at the present stage of an ongoing, open ended cultural tradition.

[My emphasis]

Idem, p. 28

Gérard Raulet and Seyla Benhabib make the same point as Christopher Norris when they attack Lyotard for the "naïvety" or for the "lack of criteria" in his deduction of the validity of pragmatism. They too completely ignore the critical background to Lyotard's argument and therefore, use the terms naïve and facile which they could not use against a critical philosophy dedicated to an aware and difficult study of the possibility of judgement:

In the absence of radical, democratic measures redressing economic, social, and cultural inequalities and forms of subordination, the plurastic vision of groups Lyotard proposes remains naïve.

[My emphasis] Seyla Benhabib, in
 "Postmodernism: A rejoinder
 to Jean-François Lyotard",
 p. 124

Lyotard's neo-liberal interest group pluralism is naïve in yet another way. The assumption that language games would be games of perfect information, suggests that language games do not compete, struggle with, or contradict one

Not only is Lyotard naive, he is also cynical (according to Benhabib; note that this view coincides with Jacques Bouveresse's remarks in Rationalité et cynisme):

To deny that the play of language games may not turn into a matter of life and death, and that the intellectual cannot remain the priest of many gods but must take a stance, is cynical.

Idem, p. 124

Given Lyotard's enduring concern to think through the holocaust as a conflict of language games or genres, the above quote leaves me confused (see my work on the Auschwitz paradigm in chapters II and III of the thesis). Equally worrying in the context of this thesis, is Gérard Raulet's claim that Lyotard cannot be refuted. I hope to have shown that criteria can be found in Le différend allowing specific refutations of certain aspects of Lyotard's work; thereby, I will have refuted this statement by Raulet:

Their attraction [the philosophical schemes of Lyotard, Baudrillard and Guillaumel] comes from the suggestiveness that they radiate in bestowing the status of proof upon concrete indices; since

they simultaneously pose as mere postmodern "narratives", or myths, they avoid refutation, which, given the lack of metacriteria, cannot even make itself heard!

[My emphasis] Gérard Raullet, "From modernity as one-way street to postmodernity as dead end", pp. 163, 164

What is remarkable about the three authors cited above is the manner in which they take on board the parallels Rorty draws between his post-philosophical pragmatism and Lyotard's "postmodernism", and Habermas's classification of Lyotard as neo-conservative and anti-theoretical (in the light of Lyotard's Marxist writings for Socialisme ou Barbarie and Pouvoir Ouvrier, I find this second position particularly shallow - at least, in the level of scholastic research it displays). They espouse the views of Habermas and Rorty without taking account of Lyotard's replies to both of them (in Critique Vol. 38, pp. 357passim, "Réponse à la question: Qu'est-ce que le postmodernisme?", in Critique Vol. 41, "Discussion entre J-F Lyotard et Richard Rorty" and in Le postmodernisme expliqué aux enfants (this last book only applies to the later criticisms because it was published towards the end of the "postmodernism debate" in 1986)) and without investigating the

foundational work to La condition postmoderne whose avowed status is that of a "report" - their reading of the book is "naive" because they steadfastly refuse to look beyond it for an explanation of the problems they find there.

The point is: neither Habermas nor Rorty seeks out the theoretical or even bibliographical background to Lyotard's postmodernism. This is because both assume that to hold to a plurality of language games ungoverned by a meta-theory, is to imply that this position must be arrived at pragmatically and not through a critical exposition. They do not justify that assumption, but it is how they are able to classify Lyotard as a pragmatic neo-liberal or neo-conservative; here is Rorty's version of the point where he is in agreement with Habermas ("in my opinion Habermas's description is rather accurate"):

The fundamental motivation of Habermas's thesis on the "neo-conservatism" of thinkers such as Foucault, Deleuze and Lyotard, is that they offer no "theoretical" reason for taking one social direction rather than another. They abandon the dynamics upon which social liberal thought (such as that of Rawls, in America, and Habermas himself, in Germany) is founded; that is, the

need to be in contact with a reality hidden by "ideology" and revealed through "theory".

"Habermas, Lyotard et la postmodernité",

Critique 40, p. 192

La motivation fondamentale de la thèse de Habermas selon laquelle des penseurs comme Foucault, Deleuze et Lyotard sont "néo-conservateurs" est qu'ils ne présentent aucune raison "théorique" d'aller dans une direction sociale plutôt que dans une autre, et qu'ils abandonnent la dynamique sur laquelle s'est fondée la pensée sociale libérale (comme celle que représente Rawls en Amérique et Habermas lui-même en Allemagne), à savoir la nécessité d'être en contact avec une réalité obscurcie par l'"idéologie" et révélée par la "théorie".

Note that the above quote holds the seeds for Rorty's subsequent realisation of the strong differences between himself and Lyotard, to come out in their debate in *Critique* vol. 41. It is the abandonment of "socio-liberal" consensus that will eventually scare Rorty away; however, Rorty never considers that such an abandonment can have a theoretical basis, because he too readily associates "theory" with socio-

liberalism. This last remark is made clear in Rorty's article "Brigands et intellectuels", Critique vol. 44, where he studiously avoids any reference to Lyotard - banished as an anti-theoretical ideologue too prone to "Leftspeak":

[...] we have difficulty in understanding how philosophers such as Lyotard tend to take particular historical events as the proof of a "bankruptcy" of our oldest attempts at social reform. That tendency - possibly the result of a sustained effort to save something of Marxism, an attempt ending in the taking up of certain habits of thought typical to Marxists - is what distinguishes French philosophy from philosophy in England, America and Germany.

"Cosmopolitisme sans émancipation",
Critique, vol 41, p. 579

Again, Rorty proves impervious to the theoretical demonstration of the bankruptcy of our "oldest attempts at social reform", preferring to put down Lyotard's argument as prone to "Marxist tendencies".

Unlike Richard Rorty, Jürgen Habermas has not written at length on the subject of J-F. Lyotard's philosophy; yet, the few remarks Habermas has made form the basis for a wide range of works on Lyotard (notably, Peter

Dews in his Logics of disintegration, Seyla Benhabib and Emilia Steuerman). I have sketched a general criticism of works emanating from Habermas's position vis-à-vis postmodernism earlier on in this note, given the sparsity of direct comments on Lyotard by Habermas I will not extend my general criticism to the details of his work. I will, however, give the seminal Habermasian quotes leading to the "neo-conservative" and "anti-theory" labels that have been stuck to Lyotard's work. Here is Habermas's definition of neo-conservative:

[...], the Neo-conservatives welcome the development of modern science, as long as this only goes beyond its sphere to carry forward technical progress, capitalist growth and rational administration. Moreover, they recommend a politics of defusing the explosive content of cultural modernity.

New German Critique, n° 22, p. 13

What is more:

[...] I fear that the ideas of anti-modernity, together with an additional touch of pre-modernity, are becoming popular in the circles of alternative culture.

Idem, p. 14

Although it is beyond the scope of this thesis to examine the motives behind Habermas's categorisations - "neo", "post", "anti", "pre" -, it does seem that an investigation of his sense of the political, in spheres such as academe and alternative culture, might reveal a considerable personal investment in finding Lyotard's philosophy "anti-theoretical" and hence not worthy of "popularity".

100. The types of exegetical reading I am here referring to are found in the works by Geoff Bennington (Lyotard writing the event) and David Carroll ("Rephrasing the political with Kant and Lyotard: from aesthetic to political judgements" and Paraesthetics). Bennington and Carroll - to a lesser extent - offer careful and sympathetic readings of Le différend; however, they are both inclined to follow Lyotard's argument without raising or attempting to solve problems that come out of specific aspects of his theory. This means that their work is sometimes uncritical and, at times, lacking in a full exposition of the points of Lyotard's argument - in particular: the points that remain implicit in Le différend. The reason for

Bennington's and Carroll's ready acceptance of the steps in Lyotard's argument is that they aim to form general criticisms of his work, in Carroll's case a study of the socio-political and aesthetical value of a philosophy based on différends, and in Bennington's case a deconstruction of, or study of the relationship between deconstruction and the philosophy of différends: "This would be the place to enchaîner with Derrida's "Préjugés: devant la loi". The flaws in these approaches is that they cannot consider the strongest version of Lyotard's work because they have not challenged and reconstituted the many, disparate elements that make up the philosophy of différends. For example, David Carroll ends his exposition of the use of a philosophy of language in Le différend without making any direct criticism of it as philosophy of language: instead, he immediately proceeds to a consideration of its social consequence:

Keeping the social as a question does not imply that no judgements are to be made, however, that one must remain "neutral". On the contrary, it implies that judgements must continually be made and re-made, and that neutrality is impossible because all judgement must provoke différends when there is no universal concept of society, no consensus, no law, to determine judgement.

Phrasing the political will mean phrasing the
disputes over the political, keeping the
political as an unresolved but pressing question.

[My emphasis] "Rephrasing the political
with Kant and Lyotard", p. 76

In the quote, Carroll has taken the consequences of
Lyotard's philosophy of language as given:

One advantage provided by a philosophy of phrases
is that the social is evoked and in each question
in each phrase but without being defined before
the fact.

Idem, p. 75

He is therefore able to proceed to a discussion of
judgement as free of linguistic determination. In my
view the ensuing discussion will be incomplete if it
is not preceded by a critique of the philosophy of
language. Without such a critique it will be possible
to take for granted that judgement is undetermined
and, furthermore, it will be possible to ignore why
Lyotard takes great care in the definition of the
terms in the philosophy of language (rigid designators
and sentences).

Finally, I do not identify Geoff Bennington's and David Carroll's work with the books and essays following the Habermas-Rorty-Lyotard debate - their work is of a much higher scholarly value - due to their exegetical approach. In fact, both Bennington and Carroll are at pains to point out the theoretical and critical import of Lyotard's philosophy: "a form of theory and a practice of theory questioning any decision from the point of view of literature" (David Carroll, Critique n° 491, p. 269).

101. Auschwitz est la plus réelle des réalités à cet égard. Son nom marque les confins où la connaissance historique voit sa compétence récusée. Il ne s'ensuit pas qu'on entre dans le non-sens. L'alternative n'est pas: ou la signification établie par la science, ou l'absurdité, mystique comprise.

Le différend, p. 92

102. Un nom [Auschwitz] qui désignerait ce qui n'a pas de nom dans la spéculation, un nom de l'anonyme. Et pour la spéculation, l'anonyme tout court [...]. Le nom resterait vide, dans une mémoire mécanique, abandonnée par le concept.

"Discussions, ou: phraser "après
Auschwitz"", pp. 312, 313

103. Lyotard's idea of a name as rigid designator is taken from Saul Kripke; see his Naming and necessity, Blackwell 1980, "The referent must be fixed, the name is a rigid designator, as Kripke says ...". I will not include a discussion of Kripke's work in this thesis because, although Lyotard draws on Kripke's research, he does not retain his theory as a whole, nor does leave the idea of a rigid designator unaltered. In fact, Lyotard adapts the notion of a rigid designator to his own purposes with scant regard for Kripke's original intentions, or for the subsequent criticisms of Kripke's theory; I will, therefore, concentrate on Lyotard's definition of names alone. Note that this remark is true of Lyotard's relationship to most analytic philosophers - except Wittgenstein and his theory of language games -, his readings of Frege, Kripke, Tarski, Russell and von Wright are strictly mercenary: they set out merely to exploit whatever of their ideas prove useful within the context of Lyotard's own work.

104. On répond à tout réalisme que personne ne peut voir "la réalité" proprement dite. Cela suppose qu'elle a un nom propre, et l'on ne voit pas le nom propre. Nommer n'est pas montrer.

Le différend, p. 57

For a short, clear and simple exposition of his theory of rigid designators, see also Lyotard's "Missive sur l'histoire universelle", pp. 55-58, in Le postmoderne expliqué aux enfants: "Names are rigid designators, they signify nothing, [...]".

105. The case of phenomenology must only be understood as peripheral to Lyotard's discussion of reality and instead, the closest context of his argument is the legal presentation of the différend as it is given in chapter III of my thesis. Whether the many, diverse versions of phenomenology, and in particular such complex theories as Husserl's phenomenology, can be reduced to Lyotard's idea of a naive realism of pure presentation is a question that is not properly raised in Le différend. I therefore take Lyotard's references to phenomenology as presumptions, he does not take account of the details of the history of phenomenology when he passes such judgements as: "One

might understand the now as the point of origin of a temporal transcendence", when speaking of Augustin and Husserl. I will study Lyotard's work on the "now" and the problem of presence in phenomenology in chapter V of the thesis; but, in the context of this chapter, the absence of a discussion of phenomenology together with allusions to it for the purposes of the argument in Le différend must be seen as a flaw in the book - despite Lyotard's extensive knowledge of phenomenology as displayed in his books La phénoménologie and Discours, figure.

106. L'impression sensible est, comme l'écrit Kant, "rapportée à un objet", nommé phénomène. La fonction référentielle qui apparaît alors résulte de la capacité qu'a le sujet, capacité active, de montrer le moment et le lieu de ce qui par sa matière fait l'objet (Wirkung) ou l'impression sensible [...]. Ce que nous appelons la capacité active.

Le différend, p. 97

107. Lyotard first treated the notion of deicticity and ostension in Discours, figure, pp. 37-39. In Le

différend, Lyotard uses the notion of a rigid designator to by-pass the corporeal approach he adopted in the earlier book where the act of ostension was analysed as inseparable from the body of the person indicating an object:

Above and below, right and left, in front and behind, are loci that must be linked to a generating volume, a living, talking body and its indicating gesture. Yet, the dimensions of the body are not reflected in those loci. The indication the here refers back to a co-existence of body and space that has no pair in the experience of language.

Discours, figure, pp. 38-39

Haut et bas, droite et gauche, avant et arrière, sont des lieux qu'il faut rapporter à un volume générateur, qui est le corps vivant et parlant et son geste gestateur, sans qu'on doive néanmoins voir dans ces lieux des dimensions de ce corps. L'indication du ici renvoie à une coexistence du corps et de l'espace qui n'a pas sa pareille dans l'expérience du langage.

108. Les déictiques rapportent les instances de l'univers présenté par la phrase où ils sont placés à une origine spatio-temporelle "actuelle" nommée aussi "je-ici-maintenant". Ces déictiques sont des désignateurs de réalité. Ils désignent leur objet par une permanence extra-linguistique, comme une "donnée".

Le différend, p. 57

109. Cependant, cette "origine", bien loin de constituer elle-même une permanence, est présentée ou co-présentée avec l'univers de la phrase où ils sont marqués. Elle apparaît et disparaît avec cet univers, donc avec cette phrase.

Le différend, p. 57

110. Sa plasticité (du nom propre) est évidemment bornée par son appartenance à un ou des mondes de noms, par la place qui lui est attribuée constitutivement parmi d'autres noms selon les écarts spatiaux, temporels, anthroponymiques, eux-mêmes nommés (des kilomètres, [...], des générations). [...]. Reste que, à l'intérieur de

ces bornes, un essaim non déterminable de sens peut venir s'abattre sur un nom sans changer sa valeur de désignation.

"Judicieux dans le différend", p. 228

111. Le nom désigne "fixement" à travers des univers de phrases, il s'inscrit alors dans des réseaux de noms qui permettent les repérages de réalité, mais il ne dote pas son référent d'une réalité.

Le différend, p. 69

112. [...] le nom propre peut être placé sans modification de sa valeur de désignateur (et c'est sa rigidité) sur toutes les instances des univers de phrases et sous les régimes les plus hétérogènes.

"Judicieux dans le différend", p. 227

113. Le nom remplit cet office de cheville parce qu'il est un désignateur rigide et constant. Sa portée déictique est indépendante de la phrase dans laquelle il figure actuellement, et il peut être affecté de beaucoup de valeurs sémantiques parce

qu'il n'exclut que celles qui sont incompatibles avec sa place dans les réseaux de noms.

Le différend, p. 73

114. C'est par lui [le nom], maillon vide, que je à l'instant t et je à l'instant t₊₁ peuvent s'enchaîner entre eux et avec me voici (ostension). La possibilité de la réalité, y compris celle du sujet, est fixée dans les réseaux de noms "avant" que la réalité se montre et se signifie dans une expérience.

Le différend, p. 76

115. On ne peut pas prouver que tout a été signifié d'un nom (que "tout est dit de x") non seulement parce qu'aucun tout ne peut être prouvé, mais parce que le nom n'étant pas par lui-même un désignateur de réalité (il faut pour cela que lui soit associés un sens et un référent ostensible), l'inflation des sens qui peuvent lui être attachés n'est pas bornée par les propriétés "réelles" de son référent.

Le différend, p. 78

116. Le référent d'un nom propre, Bonaparte, Auschwitz, est à la fois fortement déterminé, quant à son repérage dans les réseaux de noms et de relations entre noms (les mondes) et faiblement déterminé quant à son sens du fait du grand nombre et de l'hétérogénéité des univers de phrases dans lesquelles il peut prendre place comme instance.

Le différend, p. 81

117. Mais la réalité du tort subi à Auschwitz [...] restait et reste à établir, et elle ne peut l'être parce qu'il est du tort de ne pouvoir être établi par consensus.

Le différend, p. 90

118. A philosopher who takes an extremely critical view of Lyotard's philosophy of language is Jacques Bouveresse in his book Rationalité et cynisme (Minuit, 1984). In the book, Bouveresse attempts an ironic attack on what he sees as cynical philosophy, philosophy of irrationality, anti-foundationalism and relativism - sadly, Rationalité et cynisme is neither funny nor ironic, however, this need not impinge its line of

argument. Bouveresse criticises Lyotard's philosophy of language from the presupposition that he is a "cynical" philosopher, a philosopher trying to use a reasoned theory in the undermining of all rules of consensus and legitimacy, thereby affirming conflict and un-reason. Bouveresse then notes that despite his "cynical" attitude, Lyotard retains foundationalist obsessions in his celebration of conflict:

To affirm that a problem of incommensurability must necessarily be posed on the subject of the relations between any genre and any other and, eventually, between any sentence and any other, is to take an intellectual step giving in to three typically philosophical obsessions. The obsessions of generality, of radicality and, above all, of legitimacy (which, when speaking of Lyotard, is no small paradox).

[My emphasis]

Rationalité et cynisme,

p. 155

Affirmer qu'un problème du même type [d'incommensurabilité] se pose nécessairement à propos des relations entre n'importe quel genre de discours et n'importe quel autre et pour finir également entre n'importe quelle phrase et n'importe quelle autre.

relève d'une démarche intellectuelle qui consiste à céder simultanément à trois obsessions typiquement philosophiques: celle de la généralité, celle de la radicalité et, pour consommer le tout (ce qui, dans le cas de Lyotard, n'est pas le moindre paradoxe), celle de la légitimité elle-même.

Lyotard's argument is, therefore, at best paradoxical, at worst cynical and ingenuous. The principal flaw in Bouveresse's argument is to presuppose that a radical, general philosophy of legitimacy must provide universal rules for rational consensus, rather than local rules for radical dissensus (différends). The question is: Why should this be the case? Bouveresse's answer to this question is deeply unsatisfactory:

Even if, as Lyotard affirms, the postmodern society only counts through dissensus, it will only last if a minimal consensus and a relative stability are kept - as was the case for all societies prior to the postmodern. This consensus and stability necessarily implies an agreement on the obligation to preserve and, if possible, improve certain institutions and types of organisation.

Rationalité et cynisme, p. 182

Même si la société postmoderne ne vaut plus, comme l'affirme Lyotard, que par le dissentiment, elle ne durera, comme toutes celles qui l'ont précédée, qu'à la condition de préserver un consensus minimal et une stabilité relative, qui implique nécessairement la réalisation d'un accord sur l'obligation de conserver et, si possible, d'améliorer certaines institutions et certains types d'organisation.

The above quote utterly misses the point that practical "minimal consensus" and "relative stability" are not excluded by Lyotard: in some sense a différend is "relatively stable" and involves a "minimal consensus" (if only the consentment to co-exist with one's oppressors). What is under attack in Le différend, is the view that practical co-existence necessarily implies an agreement upon an obligation and a legitimacy of the universal type.

119. This is the conclusion that overly exegetical readings of Le différend, such as the interpretation by Geoff Bennington and David Carroll, are not able to come to - See, Lyotard writing the event, pp. 120-121, and

"Rephrasing the political with Kant and Lyotard [...]", pp. 74-76.

120. Il faudrait dire de façon simplificatrice qu'une phrase présente ce dont il s'agit, le cas, ta pragmata, qui est son référent; ce qui est signifié du cas, le sens, der Sinn; ce à quoi ou à l'adresse de quoi cela est signifié du cas, le destinataire; ce "par" quoi ou au nom de quoi cela est signifié du cas, le destinateur. La disposition d'un univers de phrase consiste dans la situation de ces instances les unes par rapport aux autres. Une phrase peut comporter plusieurs référents, plusieurs sens, plusieurs destinataires, plusieurs destinateurs. Chacun de ces quatre instances peut être ou ne pas être marquée dans la phrase.

Le différend, p. 31

121. Celui qui dit quelque chose est le plaignant, il doit en apporter la démonstration, au moyen de phrases bien formées et de procédures d'établissement de l'existence de leur référent. La réalité est toujours à la charge du plaignant.

Le différend, p. 23

122. Faire droit au différend, c'est instituer de nouveaux destinateurs, de nouvelles significations, de nouveaux référents pour que le tort trouve à s'exprimer et que le plaignant cesse d'être une victime. Cela exige de nouvelles règles de formation et d'entraînement de phrases.

Le différend, p.29

123. As I have shown in chapter III, to redress a tort is not to solve a différend. Thus, although the nature of idiom in language allows new formulations for the expression of wrongs that remained ineffable prior to the invention of an idiom proper to them, the possibility of redressing tort does not imply a common, universal language in which all wrongs can be righted and therefore, where différends can be resolved. Lyotard does not define différends as problems within a common discourse and hence, as cases requiring a translation back into that discourse: rather, différends are cases intrinsic to any language: where sentences are formed, différends occur.

The above point differentiates Lyotard from Habermas. Where Lyotard seeks to ground a radical dissensus, Habermas posits the possibility of consensus:

A critically enlightened hermeneutic that differentiates between insight and delusion incorporates the meta-hermeneutic awareness of the conditions for the possibility of systematically distorted communication [this point is made against the hermeneutics of H.-G. Gadamer]. It connects the process of understanding to the principle of rational discourse, according to which truth would only be guaranteed by that kind of consensus which was achieved under the idealized conditions of unlimited communication free from domination and could be maintained over time.

[My emphasis] J. Habermas, "The hermeneutic claim to universality", p. 205

Lyotard's work in Le différend attempts to show that there can be no legitimate theoretical ground on which to base the Habermasian "ideal speech situation". No ideal sentence can be "free from domination" or part of an "unlimited communication" because the

concatenation and occurrence of sentences is contingent; Habermas's "idealized conditions" are therefore contingent and cannot form the basis for a principle of rational discourse associated with a transcendental truth. In place of an ideal speech situation, events or occurrences call for "an infinite number of commentaries". Heterogenous commentaries which cannot ground a consensus in dialogue or Diskurs:

The network formed by all the phrases [of commentary], for which no common code exists, becomes more fragile in proportion to its increasing complexity. It seems to me that the only consensus we ought to be worrying about is one that would encourage this heterogeneity or "dissensus".

J.-F. Lyotard, *Pérégrinations*, p. 44

See also, his "Appendice svelte à la question postmoderne", pp. 81-85, in Tombeau de l'intellectuel.

124. Note that Lyotard's use of the expression as if ("comme si") is an explicit reference to his reading of Kant. The notion of the use of

analogies in the application of the rules from a given faculty to a realm other than its own, is the use of those rules as if they could be legitimately applied to a realm governed by rules to which they are incommensurate. The expression as if marks the throwing of a bridge over the abyss between faculties - Lyotard also uses the trope of a ship navigating between the islands of an archipelago -, as such this use of analogies is a necessary transcendental illusion because the abyss cannot legitimately be crossed. See, L'enthousiasme, pp. 31-45: "... the dialectic sentence makes as if it is speaking of phenomena, critique insists that it speaks of as if phenomena."

125. [...] le sujet ne peut avoir des présentations, mais seulement des représentations, non pas au sens théâtral où celles-ci viennent à la place d'un objet absent, mais plutôt en ce sens juridique que les facultés ne cessent de se faire les unes aux autres des remontrances, des doléances, c'est-à-dire de se critiquer en confrontant leurs objets respectifs.

Le différend, p. 100

126. Le paragraphe en français est une division (et/ou signe) dans un écrit. Il sépare ce qu'il unit. Ce mot grec signifie ce qui est écrit à côté. Paragramma est une clause additionnelle à une loi ou à un contrat. Paragraphe est une exception opposée par le défenseur à la recevabilité d'une plainte. Paragraphein: ajouter une clause, en particulier frauduleusement.

Le différend, p. 104

127. Paragraphe, c'est écrire Et, Et d'ailleurs, Et toutefois. [...]. Le différend est réintroduit au coeur de ce qui doit régler le litige, entre la loi et le cas incriminé.

Le différend, p. 104

128. Ni le sens d'une phrase ni sa réalité ne sont indubitables. Son sens puisqu'il est suspendu à son enchaînement sur une autre phrase qui l'expliquera. Sa réalité puisque son assertion est soumise aux règles d'établissement de la réalité qui comporte l'épreuve du doute.

Le différend, p. 103

129. [...] la phrase formulant la forme générale de l'opération de passage d'une phrase à l'autre est elle-même soumise à cette forme de l'opération de passage.

Le différend, p. 95

130. [...] la substitution d'une phrase type (ou de l'objet phrase) à une phrase événement est exigée par un régime de phrase, le régime définitionnel (on n'introduit dans le discours que des termes pris comme objets d'un métalangage dont on établit des descriptions définies), et par un genre de discours, le genre dialogique.

Le différend, p. 106

131. Il y a une nécessité que la valeur de la phrase qui fait l'objet d'une description (qui est prise en référent d'une phrase définitionnelle) soit transformée du fait qu'elle est prise pour le référent d'une autre phrase, la définitionnelle, qui est métalangagière.

Le différend, p. 106

132. Ce n'est pas le je pensant ou réflexif qui résiste à l'épreuve du doute universel, c'est la phrase et le temps.

Le différend, p. 93

133. De la phrase: Je doute, il ne résulte pas que je suis, il suit qu'il y a une phrase.

Le différend, p. 93

134. Ce qui échappe au doute, c'est qu'il y ait au moins une phrase, quelle qu'elle soit. [...]. Une phrase est un quoi.

Le différend, p. 102

135. Dans: Toute phrase est, toute phrase signifie: tout ce qui arrive: est signifie: il y a. Il arrive. Mais Il arrive n'est pas ce qui arrive, au sens où quod n'est pas quid (où la présentation n'est pas la situation). Donc est ne signifie pas: est là, moins encore: est réel. Est ne signifie rien. désignerait l'occurrence "avant" la signification (le contenu) de l'occurrence.

Le différend, p. 120

136. Et quant au métalangage qui est en jeu dans "mes" phrases ici, il n'a pas de statut logique, il n'a pas pour fonction de fixer le sens d'un terme. Il en appelle à la faculté du langage ordinaire de se référer à lui-même.

Le différend, p. 103

Note, this quote illustrates Lyotard's avoidance of the metalinguistic status of his own commentary, as universal discourse, insofar as such a discourse could refute his own claims. There is no logical link between his text and the occurrence of sentences that can determine this "coming into being".

137. Adjointe à la précédente par et, une phrase surgit du néant et s'enchaîne à elle. La parataxe connote ainsi l'abîme de non-être qui s'ouvre entre les phrases, elle insiste sur l'étonnement que quelque chose commence quand ce qui est dit est dit. Le et est la conjonction qui laisse le plus menacer la discontinuité (ou l'oubli) constitutive du temps, tout en la défiant par la

continuité (ou la rétention), également constitutive.

Le différend, p. 102

138. La nécessité qu'il y ait: Et une phrase n'est pas logique (question comment?) mais ontologique (question quoi?). Elle ne se fonde pourtant sur aucune évidence. Celle-ci exigerait qu'un sujet témoin indépendant de l'enchaînement de phrases puisse attester qu'il a toujours lieu.

Le différend, p. 103

139. Enchaîner est nécessaire, un enchaînement ne l'est pas. Mais il peut être déclaré pertinent, la phrase qui le déclare est une règle d'enchaînement. Elle est une partie constitutive d'un genre de discours: après telles sortes de phrases, voici celles qui sont permises.

Le différend, p. 122

140. Jean-François Lyotard first exploited the heterogeneity of régimes of sentences in his paper on the work of Emmanuel Lévinas entitled "Logique de

Lévinas" - note, his work on the philosophy of language, though, dates back to Discours, figure (in particular the work on deictics). In his paper, Lyotard attempts to establish the incommensurability of prescriptive and descriptive statements. Through this property of prescription and description, he defends Lévinas's work against the Hegelian principle of Aufhebung ("against the Hegelian persecution"), by showing that there can be no synthesis of a prescriptive and a descriptive statement; however, Lyotard further notes that his demonstration raises specific problems concerning the status of Lévinas's own text, itself a description of a prescription:

How does Lévinas's commentary on this situation, incommensurable to denotations, escape the trap of denotative metalanguage? And how does his reader assimilate that commentary?

"Logique de Lévinas", p. 148

Comment le commentaire de Lévinas sur cette situation incommensurable aux dénnotations échappe-t-il au piège du métalangage dénnotatif? Comment son lecteur reçoit-il le commentaire?

"Logique de Lévinas" demonstrates Lyotard's early attempts at the conjunction of Kantian critique and a

philosophy of language. Le différend and "Discussions, ou: phraser 'après Auschwitz'" pursue this attack on Hegel, and resolve some of the issues raised in the earlier paper on the relation opposing Lévinas and Hegel - see, in particular, the "Le résultat" and "L'obligation" sections of the book. Lyotard's specific arguments against Lévinas and Hegel are, though, outside the scope of my thesis, and I will not develop a study of Lyotard's complex relation to either philosopher.

141. Certain translators of Le différend, David Carroll and Georges Van Den Abbeele, do not translate Lyotard's French word phrase into the English word sentence; instead, they use the English phrase. At first sight this seems to threaten my argument concerning the uneasy relationship of the ontological and semantic-syntactic definitions of Lyotard's sentences. However, it does not, in fact, undermine my argument to use the English word phrase because, irrespective of the word used in translation, Lyotard's French phrase still bridges the space separating his philosophy of language and his ontology. In my translations of Le différend, I always use the English sentence for Lyotard's phrase; in so doing, I wholly agree with

Geoff Bennington's argument in favour of the word sentence. Note, however, that Bennington does not foresee the contradictions involved in his argument given the problematic grammatical status of sentences defined as contingent and undetermined occurrences.

In his translation of Le différend for the University of Minnesota Press, Georges Van Den Abbeele elects to translate Lyotard's phrase (the usual French word for the English "sentence") by the English "phrase". I will not follow Van Den Abbeele and instead, I agree with Bennington's commentary:

[...], I have preferred to translate phrase as "sentence", for the following reasons:

- Le différend quite deliberately entertains an ambivalent relationship with the Anglo-American philosophical tradition: Lyotard's use of phrase marks this fact, and "sentence" retains that mark in a way that "phrase" does not.
- In avoiding "sentence"'s connotation of grammatical completion and unity, phrase carries a strong sense of designating a fragment of such a unity. On balance, it is more accurate to think of Lyotard's phrase

as a unity than as a fragment of a larger unity.

- [in the third and last reason, Bennington claims that it is intuitively odd to think of some of Lyotard's examples of sentences as phrases].

Geoff Bennington, Lyotard writing the event, pp. 123, 124

142. Lyotard's use, in this quote, of the distinction typical-sentence/occurring sentence is particularly revealing. In defining his single term "sentence" he has been forced to take account of the distinction between grammatical and ontological sentences, this demonstrates the validity of my point concerning the determination of occurring sentences by the syntactic and semantic properties of grammatical or "typical" sentences.

143. Par: Une phrase, j'entends la phrase qui est le cas, der Fall, la phrase token, la phrase événement. Une phrase-type est le référent d'une phrase événement. Que la phrase échappe à l'épreuve du doute universel, cela ne vient ni de

ce qu'elle est réelle ni de ce qu'elle est vraie,
 mais de ce qu'elle est seulement ce qui arrive,
what is occurring, das Fallende.

Le différend, p. 103

144. Pérégrinations, p .31

145. I will put particular emphasis on Jacques Derrida's work where it is relevant to Lyotard's deduction of apodictic laws. This is because Derrida is the philosopher best suited to an investigation of the deduction of laws as opposed to a study of their applications or consequences. He abstracts from the goals, motives and implications of a theory in order to analyse the presuppositions, exclusions and limits of the genesis of the foundation of the theory. Once such flaws have been uncovered, Derrida is able to deconstruct the philosophy without entering into a polemic concerning the advantages and disadvantages involved in a given philosophical approach. This gives him a tremendous headstart over philosophers such as Rorty and Habermas, who must concentrate on the legal presentation of the différend and on the political implications of Lyotard's theories when they should, in fact, criticize its foundations. So, even though

Derrida is in sympathy with Lyotard's ontology based on the undetermined nature of occurrence:

Why underline the expression "that which arrives"? Because, for me, it belongs to the order of the absolutely unpredictable, and that is always the condition of occurrence. Even when it seems to surface from a buried past, that which arrives always comes from the future [...]. Something arrives only so long as one did not expect it.

"La guerre de Paul de Man",
in Mémoires, p. 152

Pourquoi maintenant souligner cette expression "ce qui arrive"? Parce que cela appartient pour moi à l'ordre de l'imprévisible absolu, et c'est toujours la condition de l'événement. Même quand cela semble remonter d'un passé enfoui, ce qui arrive arrive toujours en provenance de l'avenir [...]. Quelque chose arrive seulement à la condition qu'on ne s'y attende pas.

He is still critical of Lyotard's deduction of the contingency of occurrence and judgement. And it is there, in the deduction, that the source of further prejudice against the absolute novelty of events is

given. In this chapter, my analysis of Lyotard's distinction of presentation and situation is inspired by Derrida's approach in his book Schibboleth.

146. [...] il est impossible que les jugements du nouveau tribunal ne créent pas de nouveaux torts puisqu'ils régleront ou croiront régler les différends comme des litiges.

147. A la différence d'un litige, un différend serait un cas de conflit entre deux parties (au moins) qui ne pourrait pas être tranché équitablement faute d'une règle de jugement applicable aux deux argumentations. Que l'une soit légitime n'impliquerait pas que l'autre ne le soit pas. Si l'on applique cependant la même règle de jugement à l'une et à l'autre pour trancher leur différend comme si celui-ci était un litige, on cause un tort à l'une d'elles.

Le différend, p. 9

148. Aucune phrase n'est la première. Cela ne veut pas dire seulement que d'autres la précédent, mais que des modes d'enchaînement impliqués dans les précédentes, possibles donc, sont prêts à la prendre en compte et à l'inscrire dans la poursuite d'un enjeu, à

s'actualiser par son moyen. En ce sens une phrase qui arrive est mise en jeu dans un conflit entre discours. Ce conflit est un différend, [...].

Le différend, p. 198

149. Note, that in addition to the definition of the différend as an irresolvable conflict, there is a second definition of the term. This other definition identifies a différend to a given tort or wrong and not to an irresolvable conflict; it can be found mainly in texts leading up to Le différend, notably, in the essay "Le différend" from "Tombeau de l'intellectuel":

I would say that there is a différend between two parties when the conflict bringing them into opposition is "adjudged" [ruled over] according to the idiom of one party, while the tort suffered by the other party cannot be expressed in that idiom.

Tombeau de l'intellectuel, p. 29

Je dirais qu'il y a différend entre deux parties quand le "règlement" du conflit qui les oppose se fait dans l'idiome de l'une d'elles alors que le

tort dont l'autre souffre ne se signifie pas dans cet idiome.

This second definition allows différends to be solved if different idioms can be translated into one another, or, if torts can be translated into a universal idiom. So it is important to associate the notion of idiom with Lyotard's definition of genres so that idioms can be seen as heterogeneous. If this association is not made, then it appears that différends can be resolved and thereby Lyotard's legal presentation of the différend (see chapter III) is contradicted. It is important to recognise this intractable side of différends for the understanding of Lyotard's philosophy of language. However, some commentators find the limitations inherent to a system admitting to irresolvable conflicts too pessimistic or "violent" to be acceptable. Take, for example, Gil Delaunoi in his review of Le différend for Esprit, July-August 1984. Delaunoi, making an interesting parallel with Hobbes' Leviathan, notes that Lyotard offers no teleological solution to différends; he thereby follows Lyotard into the conclusion that différends can only be witnessed and never resolved or overcome:

Lyotard does not believe in consensus. His Hobbesian realism may well be correct but his idea of a republic is rendered largely ineffective due to its inaccessibility. It is not even a politics of the least wrong but rather, it is the minimal politics allowing (possibly) the wrong to be seen but never to be wiped out in deliberation.

Esprit, July, August 1984, p. 163

Lyotard ne croit pas au consensus. Son réalisme hobbesien est peut-être le bon. Mais son idée de république est alors largement accaparée par l'évidence de son inaccessibilité. Ce n'est même pas la politique du moindre mal, c'est celle, minimale, où le délibératif permet, éventuellement, que le mal soit vu, constaté et non effacé.

From the point of view of Lyotard's philosophy this accusation of "ineffectiveness" does not hold. It does not follow from the realisation that différends are permanent states that one's practical politics will be ineffective. In Le différend the very notion of "effectivity" is brought under review and shown to be illusory if it entertains the hope of resolving différends.

150. Il faudrait dire: le destinateur et le destinataire sont des instances, marquées ou non, présentées par une phrase. Celle-ci n'est pas un message passant d'un destinateur à un destinataire tous deux indépendants d'elle. Ceux-ci sont situés dans l'univers qu'elle présente, tout comme son référent et son sens.

Le différend, p. 27

151. Une présentation est qu'il y a un univers au moins. Une situation est qu'au sein d'un univers présenté par une phrase, des relations indiquées par la forme des phrases qui enchaînent sur elle mettent les instances en relation les unes avec les autres.

Le différend, p. 109

152. Des réseaux de quasi-déictiques formés de noms d'"objets" et de noms de rapports désignent des "données" et des rapports donnés entre elles, c'est-à-dire un monde.

Le différend, p. 67

153. Le référent d'un nom propre est à la fois fortement déterminé quant à son repérage dans les

réseaux de noms et de relations entre noms et faiblement déterminé quant à son sens du fait du grand nombre et de l'hétérogénéité des univers de phrases dans lesquels il peut prendre place comme instance.

Le différend, p. 81

154. Une phrase présente au moins un univers. Quels que soient les régimes auxquels elle obéit, elle comporte un il y a. Il y a ce qui est signifié, ce dont c'est signifié, à qui et par qui ça l'est: un univers. Au moins un univers, parce que le sens, le référent, le destinataire, le destinataire peuvent être équivoques.

Le différend, p. 108

155. Une situation est qu'au sein d'un univers présenté par une phrase, des relations indiquées par la forme des phrases qui enchaînent sur elle mettent les instances en relation les unes avec les autres.

Le différend, p. 109

156. This relation of occurrence and concatenation is also raised in chapter VI, where occurrence is analysed in

terms of Lyotard's theory of the sublime. The claim that Lyotard cannot justify his work on occurrence and concatenation is considered further in that chapter.

157. The question arises, here, as to whether Lyotard's expression régime should be translated into the English régime or regimen. Georges Van Den Abbeele chooses the term regimen because of its grammatical sense:

The government of one word by another; the relation which one word in a sentence has to another depending on it.

O.E.D.

It is true that this sense is close to one of the meanings of régime in Le différend; however, as Van Den Abbeele admits - "the political, as well as the dietary, senses of the French word, régime, should be kept in mind" -, there are further senses of the word also employed in Lyotard's book. Because the notion of a régime involves a sense of the government of occurrence, albeit through grammatical relations, I have preferred to retain the English régime for the French. The only other comprehensive analysis of Le différend, namely, Geoff Bennington's Lyotard writing

the event, also retains the governmental inflexions of the French word and therefore translates régime by régime.

158. L'incommensurabilité, au sens de l'hétérogénéité des régimes de phrase et de l'impossibilité de les soumettre à une même loi (sauf à les neutraliser), marque aussi bien la relation des cognitives ou des prescriptives avec les interrogatives, les performatives, les exclamatives...

Le différend, p. 187

159. Des phrases obéissant à des régimes différents sont intraduisibles les unes dans les autres. Ne considérons arbitrairement que le sens dû à la forme (syntaxe) d'une phrase en négligeant celui qui procède du lexique. Une traduction de langue à langue présuppose que le sens présenté par une phrase de la langue de départ peut être restitué par une phrase de la langue d'arrivée. Or le sens lié à la forme syntaxique dépend du régime de phrases auquel la phrase obéit, et du genre de discours dans lequel elle est insérée. [...]. Une traduction présuppose donc qu'un régime et un

genre dans une langue ont leur analogue dans une autre [...].

Le différend, p. 79

160. Ces univers sont constitués par les situations des instances (non seulement le sens, mais le référent, le destinateur, le destinataire) et par leurs relations [des instances]. Or le destinateur d'une exclamation n'est pas situé par rapport au sens [de la présentation] comme l'est celui d'une descriptive [...].

Le différend, p. 80

161. Note that in my discussion of régimes, I have ignored the discussions turning around the heterogeneity of particular régimes. The most important of these discussions concerns the heterogeneity of the prescriptive and descriptive régimes, this is because their heterogeneity leads to important considerations in the question of obligation as addressed by Lyotard, in the section bearing the name of its topic, in Le différend. The concept of obligation is important to Lyotard in the context of his work on Kant and Lévinas, and he has discussed both of them in the light of the heterogeneity of régimes in his essays "Logique de Lévinas" and "Discussions, ou: phraser

'après Auschwitz'". I will ignore these studies of obligation in my thesis for the same reason as I ignore Lyotard's study of Hegelian Aufhebung: my project concerns the edification of Lyotard's system, its foundations, connections and contradictions. His work on Lévinas and Hegel is consequent to that edification and not an intrinsic part of his grounding of the concept of the différend: this point is illustrated by the following quote where prescription is described in terms of the more general law of concatenation:

Auschwitz is an abominable model of this incommensurability [of descriptive and prescriptive sentences]. The incommensurability has been developed by Kant, Wittgenstein and Lévinas, but their study is unilateral because incommensurability is not the sole preserve of prescriptive sentences. It can effect any concatenation, any alterity between sentences, so long as a sentence is that which arrives, the case, der Fall.

[My emphasis] "Discussions, ou: phraser 'après Auschwitz'", p. 308

(Readers in search of an analytic discussion of Lyotard's study of the incommensurability of

prescriptive and descriptive sentences should refer to Vincent Descombes' "Considérations transcendentales" in La faculté de juger. I have ignored this work because it does not actually discuss Lyotard's view, instead, Descombes develops an independent analytic study of sentences about the "good" and sentences about the "true". This approach is too far removed from Le différend to warrant any comparison.

162. Les genres de discours déterminent des enjeux, ils soumettent des phrases de régimes différents à une finalité unique: la question, l'exemple, l'argumentation, la narration, l'exclamation dans la rhétorique judiciaire sont des moyens hétérogènes de persuader.

Le différend, p. 51

163. Un genre de discours fixe un enjeu aux enchaînements des phrases. Par exemple, persuader, convaincre, vaincre, faire rire, faire pleurer, etc. [Il peut être opportun d'enchaîner de façon non pertinente pour parvenir à tel ou tel de ces effets]. La téléologie commence avec les genres de discours, non avec les phrases. Mais, en tant qu'enchaînées, les phrases sont

toujours prises dans un genre de discours (au moins).

Le différend, p. 127

164. Les phrases peuvent être des marchandises sous cette condition. L'hétérogénéité de leurs régimes ainsi que des genres de discours (des enjeux) trouve un idiome universel, le genre économique, un critère universel, le succès, avoir gagné du temps, un juge universel, la monnaie la plus forte [...].

Le différend, p. 255

165. Le seul obstacle insurmontable auquel se heurte l'hégémonie du genre économique, c'est l'hétérogénéité des régimes de phrases et celle des genres de discours, c'est qu'il n'y a pas "le langage" et "l'être" mais des occurrences.

Le différend, p. 260

166. [...] une phrase qui arrive est mise en jeu dans un conflit entre genres de discours. Ce conflit est un différend, puisque le succès (ou la validation) propre à un genre n'est pas celui ou celle qui l'est à l'autres. [...]. La

multiplicité des enjeux qui va de pair avec celle des genres fait que chaque enchaînement est une sorte de "victoire" de l'un de ceux-ci sur les autres. Ces derniers restent des possibles négligés, oubliés, refoulés.

Le différend, p. 198

167. Chaque phrase est en principe l'enjeu d'un différend entre des genres de discours, quel que soit son régime. Ce différend procède de la question: Comment l'enchaîner? qui accompagne une phrase. Et cette question procède du néant qui "sépare" cette phrase de la "suivante". Il y a des différends parce que, ou comme, il y a l'Ereignis. Mais cela s'oublie autant que possible: les genres de discours sont des modes de l'oubli du néant ou de l'occurrence, ils comblent le vide entre les phrases. C'est pourtant ce "néant" qui ouvre la possibilité des finalités propres aux genres. Si la manière d'enchaîner était nécessaire (comblée), il n'y aurait pas plusieurs modes possibles, aucun vide ne laisserait de place à cette causalité qui s'exerce de loin, la "causalité finale".

Le différend, p. 200

168. Lyotard compares and contrasts his understanding of ontology with Heidegger's work around the concept of Ereignis in the somewhat acerbic, yet informative book Heidegger et "Les Juifs". In that book it is made apparent that Lyotard wants to distance himself from Heidegger's work and its political overtones as they have been discussed in Jacques Derrida's De l'Esprit and Philippe Lacoue-Labarthe's La fiction du politique. Because of the complexity of this argument I have ignored the Heideggerian references in Le différend, there is no doubt, though, that an analysis of Lyotard's occurrence and Heidegger's Ereignis would be a fruitful method for the investigation of both concepts.

169. La présentation d'une phrase ne souffre d'être déterminée par genres que si elle est située dans l'univers d'une autre phrase, c'est-à-dire comme présentation présentée. C'est pourquoi les genres de présentation, s'il y en a, ne sont présentables que comme genres de situation.

Le différend, p. 110

170. Il suffit de faire attention à ceci: il n'y a qu'une phrase "à la fois". Beaucoup d'enchaîne-

ments possibles (ou de genres), mais une seule "fois" actuelle.

Le différend, p. 198

171. Premièrement, sur une phrase qui arrive, il faut enchaîner [...]. Deuxièmement, enchaîner est nécessaire, comment enchaîner est contingent, [...]. Les genres de discours déterminent des enjeux, ils soumettent des phrases de régimes différents à une finalité unique: la question, l'exemple, l'argumentation, la narration, l'exclamation dans la rhétorique judiciaire sont des moyens hétérogènes de persuader. Il ne s'ensuit pas que les différends entre les phrases soient éliminés. A partir de chacune d'elles un autre genre de discours peut l'inscrire dans une autre finalité. Les genres de discours ne font que repousser le différend du niveau des régimes à celui des fins.

Le différend, p. 51

172. L'occurrence, la phrase, comme quoi, qui arrive, ne relève nullement de la question du temps, mais de celle de l'être/non-être. Cette question est appelée par un sentiment: il peut ne rien arriver.

Le différend, p. 115

173. Avec Kant, une Darstellung n'est pas une présentation, c'est une mise en situation. Le refoulement de la présentation sous la représentation (la situation) est permis et encouragé par la doctrine des facultés, finalement par la métaphysique du "sujet". Les cas ne sont pas des événements, mais des citations à comparaître. La question du Il y a, un instant évoquée sous les espèces de la donnée sensible, est vite oubliée pour celle de Ce qu'il y a.

Le différend, p. 101

174. L'idée d'une donnée (donnée immédiate) est une manière d'accueillir et de censurer celle d'une présentation. Une présentation ne présente un univers à personne, elle est l'événement de sa présence (insaisissable). Une donnée est donnée à un sujet, qui la reçoit et la traite. La traiter c'est la situer, la placer dans un univers de phrase.

Le différend, p. 96

175. L'univers que présente une phrase n'est pas présenté à quelque chose ou à quelqu'un comme à un "sujet". L'univers est là autant que la phrase est le cas. Un "sujet" est situé dans un univers présenté par une phrase.

Le différend, p. 110

176. "Comme étant ce qu'il est cette fois", le maintenant est pris comme une occurrence, comme l'événement. Je disais: l'événement-phrase. [...]. Il y a Il y a, une phrase prise comme occurrence, comme quoi, qui à vrai dire n'est pas le maintenant, mais maintenant. Mais, dès que l'occurrence est saisie dans l'univers d'une autre phrase (tô logô) qui se réfère à elle comme à une entité (to einai), maintenant devient le maintenant, et il ne peut pas être saisi comme quoi, comme à la fois où il arriva. Il subit l'inévitable altération de la diachronie, il relève du régime des phrases.

Le différend, p. 114

177. Aristote déconnecte les opérateurs diachroniques jouant dans les univers de phrase et l'occurrence de la phrase (ou l'occurrence-phrase). La présentation "actuelle" est imprésentable,

l'événement s'oublie comme tel en tant qu'il se conserve (l'après), s'anticipe (l'avant), ou se "maintient" (le maintenant).

Le différend, p. 114

178. In "Ousia et Grammé, Derrida criticizes Hegel through an analysis of Aristotle's distinction of originary and "vulgar" time from the starting point of Heidegger's work in Being and Time. Later, in De l'esprit, it becomes apparent that Derrida was also implying a critique of Heidegger's conception of a fall into vulgar time through the notion of Geist; in that later book, Derrida raises the question of Hegel's and Aristotle's analyses on time, in order to introduce the problematic of Geist in Heidegger's Being and Time. In this thesis, I will not consider Derrida's work on presence and time - "The concept of time belongs entirely to metaphysics, and it names the domination of presence", "Ousia et Grammé", p. 73 - because Lyotard, having taken account of that work, moves on to a position where he hopes to avoid a privileging of presence. It is this later position that I will criticize from the point of view of Derrida's book Schibboleth (see below). For a comprehensive study of Derrida's deconstruction of

time, the reader should refer to David Wood's The deconstruction of time.

179. Mais elles [les phrases] "sont arrivées", comme Aristote le dit de maintenant. La présentation est qu'une phrase arrive. Mais "comme telle", comme quoi, elle n'est pas dans le temps. Le temps vulgaire est dans l'univers présenté par la phrase. Mais il n'y a pas de temps vulgaire, Derrida a raison, ou il n'y a que ça, car la phrase aussi est "vulgaire".

Le différend, p. 115

180. In investigating the relation of the "there is" to the "Is there?", I intend to further the study of Lyotard's notion of presentation into what Geoff Bennington calls "some of the most difficult issues raised by Le différend". Bennington himself raises those issues around presentation:

The question of presentation is an ontological question: sentences 'are' as events or occurrences, and situate entities in their universes - confusion arises because a sentence can itself be situated as an entity in a universe.

Lyotard writing the event, p. 131

He does not, however, pursue "the complexities of presentation" which "should remove any suspicion of a 'metaphysics of presence' attached to the notion of a sentence". The question is: Do they? In the last two pages of his book, Bennington demonstrates his awareness of the primordial nature of the "Is there?" in Le différend as the "pre-judgement that cannot be prejudged", the remaining pages of this chapter will pursue his suggestion concerning the study of that judgement, that is, to study it in the light of Derrida's work, namely, in the book Schibboleth (Bennington actually suggests "Préjugés: devant la loi", I will argue, below, as to the strong connection between that essay and Schibboleth).

181. Le Il y a a lieu, il est une occurrence (Ereignis), mais il ne présente rien à personne, il ne se présente pas, et il n'est pas le présent, ni la présence. Une présentation en tant qu'elle est phrasable (pensable) est marquée comme occurrence.

Le différend, p. 115

182. Simplement: on ne sait jamais ce que l'Ereignis est. Phrase dans quel idiome? de quel régime? Le tort est toujours de l'anticiper, c'est-à-dire de l'interdire.

Le différend, p. 129

183. La présentation comportée comme une phrase-cas n'est pas présentée dans l'univers que cette phrase présente (mais elle peut être marquée dans la phrase, par exemple par Il y a).

Le différend, p. 109

184. Dans: Toute phrase est, toute phrase signifie: tout ce qui arrive: est signifie: il y a, il arrive. Mais Il arrive n'est pas ce qui arrive, au sens où quod n'est pas quid (où la présentation n'est pas la situation). Donc est ne signifie pas: est là, moins encore: est réel. Est ne signifie rien, désignerait l'occurrence "avant" la signification (le contenu) de l'occurrence. La désignerait et ne la désigne pas, puisqu'en la désignant il la situe ("avant" la signification), et donc occulte nun dans hustéron protéron (Notice Aristote). Est serait plutôt: Arrive-t-il? (le il français indiquant une place vide à occuper par un référent).

Le différend, p. 120

185. See note 30, and:

Le silence non pas comme phrase ou attente, mais comme non-phrase, non quoi. Ce sentiment est l'angoisse ou l'étonnement: il y a quelque chose plutôt que rien. A peine cela est-il phrasé, l'occurrence est enchaînée, enregistrée et oubliée dans l'occurrence de cette phrase qui, en déclarant le Il y a, lie l'occurrence en la comparant avec son absence.

Le différend, p. 115

186. Le seul obstacle insurmontable auquel se heurte l'hégémonie du genre économique, c'est l'hétérogénéité des régimes de phrases et celle des genres de discours, c'est qu'il n'y a pas le langage et l'"être" mais des occurrences. L'obstacle ne tient pas à la "volonté" des humains dans un sens ou dans l'autre, mais au différend. Celui-ci renaît même des règlements des prétendus litiges. Il met les humains en demeure de se situer dans des univers de phrases inconnus, quand bien même ils n'éprouveraient pas le sentiment que quelque chose est à phraser (Car

c'est nécessité et non obligation). Le Arrive-t-il? est invincible à toute volonté de gagner du temps.

Le différend, p. 260

187. See Schibboleth, p. 26
188. See Schibboleth, p. 32
189. See Schibboleth, pp. 28, 50
190. See Schibboleth, p. 103
191. See Schibboleth, p. 72
192. See Schibboleth, p. 83
193. Ou bien, ou bien. Cela ne forme pas ici une alternative; la double démarcation de la date ne fait pas deux. Les deux phénomènes ne se contredisent pas, ils ne se juxtaposent même pas dans le même poème. Le même de toute datation s'y rassemble et s'y constitue. La possibilité de la

lecture et du retour, l'anneau, l'anniversaire et la garde, la vérité du poème, sa raison même, sa raison d'être essentielle, sa chance et son sens, c'est aussi sa folie.

Schibboleth, p. 68

194. The tropes of ash and fire recur around Derrida's meditations on occurrence and events; see, besides Schibboleth, the books Feu la cendre and De l'esprit. For a Derridean treatment of events and occurrence independent of such tropes the reader may refer to Derrida's essay "Psyché, inventions de l'autre" in the book of the same name. In the essay, Derrida considers the notion of undetermined occurrence through a study of the novelty of inventions and of whether the "new" is ever absolutely new, in art and technology.

195. L'annulation a cours partout où une date inscrit son ici et maintenant dans l'itérabilité, quand elle se voue à perdre le sens, dans l'oubli de soi, n'arrivant ainsi qu'à s'effacer.

Schibboleth, p. 73

196. Si la date devient lisible, son schibboleth vous dit: "Je", l...l, je suis, je ne suis qu'un

chiffre commémorant cela même qui aura été voué à l'oubli, destiné à devenir nom, pour un temps fini, le temps d'une rose, nom de rien, "voix de personne", nom de personne: cendre.

Schibboleth, p. 74

197. Andrew Benjamin, in his book Translation and the nature of philosophy, pursues this question of occurrence and Derrida from the point of view of translation and the possibility of translation: Benjamin also notes the limitations and value of Derrida's study of the original plurality of occurrence, but he does not accept "that it is no longer possible to provide a conception of time that does not involve the metaphysics of presence". This will to go beyond Derrida, makes Benjamin's study particularly relevant to my analysis of the conflict opposing Lyotard and Derrida: "What is at stake here is giving an ontologico-temporal description of the event of plurality".

198. There are many works by Lyotard on the concept of the sublime the principal of which are: Le différend, L'enthousiasme, "L'intérêt du sublime", "L'instant, Newman", "Le sublime et l'avant-garde" and "Après le sublime, état de l'esthétique". The two books at the

head of the list share their treatment of the sublime and, although that study is not the centre-piece of the books, it is an essential aspect of both. Note also that Lyotard discusses his views on the sublime in the talks and interviews in the ICA Documents, n° 4 and Les Cahiers de la Philosophie, n° 5 ("Complexity and the sublime" and "Les lumières, le sublime").

199. See Que peindre?, "L'instant, Newman" and "le sublime et l'avant-garde".

200. In particular, see Kant's essays "Theory and Practice", "Perpetual Peace" and "The conflict of the faculties".

201. Le secret est que chacune, bien qu'elle enchaîne sur l'autre, antérieure ou postérieure, par les règles de formation de chacune, qui sont les mêmes pour toutes et reconnaissables, est non pas même la première, mais à chaque fois la seule.

La partie de peinture, p. 15

202. Il se pourrait qu'il [Maccheroni] ait idée que ce que cherche la peinture dans son extrême ascèse, à savoir: présenter tout court, le secret doive en être puisé dans cette oeuvre de langage la plus commune, une phrase. Et qu'en poussant sa plastique vers le langage, il ne vise pas la bavarde combinatoire dont la matrice est en puissance, mais le néant auquel une phrase, prise en elle-même, arrache, et grâce auquel elle propose, les mondes qu'elle présente un instant.

La partie de peinture, p. 15

203. Aussi simple soit-elle, une phrase présente. Ce qu'elle présente est un ou des univers [...]. Un ou des microcosmes fortement organisés éclosent, leurs instances bien en place comme les pièces d'une fleur ou d'un ciel nocturne, leurs espaces-temps déployés d'un coup, immobiles, évanouis.

La partie de peinture, p. 15

204. L'occurrence, la phrase, comme quoi, qui arrive, ne relève nullement de la question du temps, mais de celle de l'être/non-être. Cette question est appelée par un sentiment: il peut ne rien

arriver. Le silence non pas comme phrase en attente, mais comme non-phrase, non quoi. Ce sentiment est l'angoisse ou l'étonnement: il y a quelque chose plutôt que rien.

Le différend, p. 115

205. Le trop tôt d'un premier coup porté à l'appareil, qu'il ne sent pas, et le trop tard d'un deuxième coup où quelque chose est senti, qui n'est pas supportable.

Heidegger et "les juifs", p. 42

206. This particular approach to the sublime through Freud and the concepts of anamnesis and Nachträglichkeit is developed by Lyotard in the books Heidegger et "les juifs" and Que peindre?. For further study, see my review of Heidegger et "les juifs" in the Warwick Journal of Philosophy, Vol. 2, Issue 1.

207. See Lyotard's treatment of anamnesis in Que peindre?, pp. 59-67: "to dramatise the visual work, and first of all painting, by noting its pursuit of an unrepresentable event".

208. This point is missed by Manfred Frank and Jacques Bouveresse in, respectively, "Discussion et consensus selon Jean-François Lyotard et Jürgen Habermas" and Rationalité et cynisme. Jacques Bouveresse and, to a lesser extent, Manfred Frank criticize Lyotard for his misinterpretation of Wittgenstein's work, in particular his work on the incommensurability of language games. Their criticisms are irrelevant given their ignorance of the project of Le différend, which is not to give a detailed and faithful account of Wittgenstein's philosophy, but to use his work as a spring-board for Lyotard's own well-defined and consistently defended theories. Le différend does not stand or fall on the merit of the interpretation of Wittgenstein made in it; instead of concentrating on that point, both Bouveresse and Frank should have studied the implications of errors in Lyotard's interpretation for his own project.

209. Pour que cette terreur se mêle de plaisir et compose avec lui le sentiment sublime, il faut encore, écrit Burke, que la menace qui l'engendre soit suspendue, tenue à distance, retenue. Ce suspense, cet amoindrissement d'une menace ou d'un danger, provoque une sorte de plaisir qui

n'est certes pas celui d'une satisfaction positive, mais plutôt d'un soulagement. C'est encore une privation, mais au second degré: l'âme est privée de la menace d'être privée de lumière, de langage, de vie. Ce plaisir de privation seconde, Burke le distingue du plaisir positif, il le baptise delight, délice.

L'inhumain, pp 110, 111

210. Ce qui est sublime c'est que du sein de cette imminence du néant, quelque chose arrive quand même, ait "lieu", qui annonce que tout n'est pas fini. Un simple voici, l'occurrence la plus minime, est ce "lieu".

L'inhumain, p. 95

211. Il ne s'agit pas d'une question de sens ni de réalité portant sur ce qui arrive, sur ce que cela veut dire. Avant de se demander ce que c'est, ce que ça signifie, avant le quid, il faut "d'abord" pour ainsi dire toujours la question qui porte sur ce qui arrive. Ou plutôt la question se précède elle-même. Car "qu'il arrive", c'est la question en tant qu'événement,

"ensuite" elle porte sur l'événement qui vient d'arriver. L'événement arrive comme point d'interrogation "avant" d'arriver comme interrogation. Il arrive, est plutôt "d'abord" arrive-t-il, est-ce, est-il possible?. "Ensuite" seulement se détermine le point par l'interrogation: arrive-t-il que ceci ou cela, est-ce ceci ou cela, est-il possible que ceci ou cela?

L'inhumain, p. 102

212. Le point d'interrogation du Arrive-t-il? arrête. Avec l'occurrence la volonté est défaite. La tâche avant-gardiste reste de défaire la présomption de l'esprit par rapport au temps. Le sentiment sublime est le nom de ce dénuement.

L'inhumain, p. 118

213. This view is radicalized in Paul Crowther's "The Kantian Sublime, the avant-garde, and the postmodern". Crowther argues that Lyotard's definition of avant-garde art as art that generates a sublime feeling can be applied to some and not all avant-garde artists as well as some non avant-garde artists:

[...] whilst superlative avant-garde works may evoke an overwhelming sense of the medium being latent with infinite possibilities of development, this is surely a striking exception rather than a rule which defines what counts as authentically avant-garde. Indeed there is no intrinsic reason why the best non avant-garde works should not also sometimes achieve this.

"The Kantian Sublime, the Avant-Garde,
and the postmodern", p. 73

I do not wish to enter into a long argument about what is really designated through the term "avant-garde" art. But that argument is the focus for Crowther's analysis of Lyotard's work. This is of course a legitimate approach, it does however ignore that the relevance of Lyotard's appeal to theories of the sublime is not primarily artistic but is instead philosophical and, more precisely, ontological and critical. Alternative definitions of avant-garde art exist - Crowther's own revolves around Kant's concept of genius - they do not, however, provide a basis for a critique of Lyotard's use of the sublime in Le différend.

214. I have drawn a distinction, here, between Lyotard's use of the sublime in Burke and his use of the sublime in Kant, the distinction underlines the difference between the use of the sublime with regard occurrence and ontology, and its use with regard the political conflicts involved in différends. So, although it might appear that the distinction is between artistic and political uses, because Lyotard uses artists to illustrate the ontological aspect of the sublime (Maccheroni, Newman and Cézanne), in fact it is important to realise that such artistic illustrations are equally important within the political aspect of Lyotard's work, in the political role of avant-garde (sublime) art, for example. This point is made explicitly in Suzanne Gearhart's essay "The Dialectic and its Aesthetic Other: Hegel and Diderot". Gearheart draws on Lyotard's work on Le différend and the sublime in order to demonstrate the disruptive influence of art against Hegel's aesthetics. In particular, she uses the différend between passion and reflection, as it is given through Diderot's Le neveu de Rameau, to discredit Hegel's reading of that novel:

As Hegel puts it in the concluding line of the Aesthetics: "it is my final wish that the higher and indestructible bond of the Idea of beauty and truth may link us and keep us firmly united now

and forever". In contrast, when we read Diderot's Le Neveu as a "post-Hegelian" work, it is easy to imagine Diderot's response to this conclusion: the purpose of art, if it has a purpose is to bear witness to the différends, that characterize not only aesthetic judgement but judgement in general.

"The Dialectic and its Aesthetic Other: Hegel and Diderot", p. 1064

215. I would like to emphasize the importance of the previous section for both the understanding of the role of the sublime and the explanation of ontological occurrence in Le différend. Geoff Bennington in his Lyotard writing the event misses the ontological aspect of the sublime in Le différend and only considers its political role in the conflicts between genres, this error leads, in my opinion, to the problems Bennington encounters in his treatment of occurrence (I have mentioned these problems in chapter V of the thesis). Two philosophers who do make the connection between ontology, occurrence, creation and the sublime are Jean-Luc Nancy and Philippe Lacoue-Labarthe. Their criticisms of Lyotard's work revolve around this very point and in particular around

whether it is Kant's or Heidegger's study of aesthetics that points the way to understanding the relation between occurrence and the sublime (I have already considered some of these issues concerning Nancy and Lacoue-Labarthe in chapter II of my thesis). I have mentioned earlier that I will not consider the connection between Heidegger's and Lyotard's ontologies because such a study requires an extensive reading of Heidegger's work and this is beyond the scope of this thesis. For this reason, I will not pursue Nancy and Lacoue-Labarthe's interpretations of the sublime any further, however, the interested reader can refer to Nancy's essays "Dies Irae" and "L'offrande sublime", and Lacoue-Labarthe's "La vérité sublime" - the two latter essays are found in the remarkable collection of essays on the sublime Du Sublime in which it is also possible to find Lyotard's "L'intérêt du sublime". The reader could also refer to the "debate" between Lacoue-Labarthe and Lyotard in the I.C.A. documents n° 4.

216. Ce que l'on nomme ordinairement le sentiment signale cet état [le différend].>.[...]. Il faut beaucoup chercher pour trouver les nouvelles règles de formation et d'enchaînement de phrases

capables d'exprimer le différend que trahit le sentiment [...].

Le différend, p. 29

217. Dans le différend, quelque chose "demande" à être mis en phrases, et souffre du tort de ne pouvoir l'être à l'instant. Alors, les humains qui croyaient se servir du langage comme d'un instrument de communication apprennent par ce sentiment de peine qui accompagne le silence (et de plaisir qui accompagne l'invention d'un nouvel idiome), qu'ils sont requis par le langage [...], qu'il leur faut permettre l'institution d'idiomes qui n'existent pas encore.

Le différend, p. 30

In the remark about language as "instrument of communication", Lyotard is alluding to the problems posed by the sublime in Habermas' defence of "modernity" against Lyotard's "postmodernity"; this view of Lyotard's is developed further in his essay "Réponse à la question: Qu'est-ce que le postmoderne?", pp. 24-29, see also his remarks in Peregrinations, pp. 43-44.

218. [...] Il [Kant] dépouille l'esthétique de Burke de ce que je crois être son enjeu majeur, qui est de montrer que le sublime est suscité par la menace que plus rien n'arrive.

L'inhumain, p. 110

219. L'imagination essaie de fournir un objet donné dans un tout de l'intuition, c'est-à-dire de fournir une présentation pour une Idée de la raison [...], elle n'y parvient pas, elle éprouve ainsi son impuissance, mais elle découvre en même temps sa destination (Bestimmung) qui est de réaliser son accord avec les Idées de la raison par une présentation convenable.

L'Enthousiasme, p. 59

220. I must distinguish my ideas concerning two versions of the sublime in Le différend from the distinction proposed by Willem van Reizen and Dick Veerman. In their interview with Lyotard "Les lumières, le sublime" (in Les cahiers de philosophie, n° 5), they draw a distinction between a "nostalgic" version of the sublime, where the notion of unrepresentability is held foremost in the definition of the term, and a

version of the sublime that takes account of the jubilation accompanying the creative pleasure following the pain felt when the impossibility of presentation is realised. I disagree wholly with this distinction, if a feeling is to be sublime it must contain both pleasure and pain, and hence only their second version is a correct description of the sublime in Lyotard's work. Lyotard himself makes the same point at length in his answer to Reizen and Veerman's questions (see "Les lumières, le sublime, pp. 70-72).

221. Le tort s'exprime par le silence du sentiment, la souffrance. [...] Le tort que le capital fait aux phrases serait donc un tort universel. Même si le tort n'est pas universel [...], le sentiment silencieux qui signale un différend reste à écouter.

Le différend, p. 246

222. [...] cette Begebenheit (donnée) de notre temps, donc, induirait une nouvelle sorte de sublime, encore plus paradoxal que celui de l'enthousiasme, où ne serait pas senti seulement l'écart irrémédiable entre une Idée et ce qui se présente pour la "réaliser", mais l'écart entre

les diverses familles de phrases et leurs présentations légitimes respectives.

L'enthousiasme, pp. 108, 109

223. Si l'enthousiasme des spectateurs est une Begebenheit probante pour la phrase selon laquelle l'humanité progresse vers le mieux, c'est que, comme sentiment esthétiquement pur, il requiert un sens commun, il en appelle à un consensus qui n'est pas plus que sensus indéterminé, mais de droit; il est une anticipation sentimentale de la république.

Le différend, p. 242

In my thesis I have not pursued this specifically aesthetic ("aesthetically pure") aspect of sublime feelings. Such a discussion would have involved a long reading of the theory of the sublime found in Kant's Critique of Judgement outside the bounds of this short chapter. For further reading in this "aesthetic" mode the reader can refer to David Carroll's Paraesthetics.

224. Kant après Burke reconnaît d'autres sentiments sublimes que l'enthousiasme. Outre le respect

bien sûr et l'admiration, le chagrin aussi [der Kummer], fait partie des "émotions vigoureuses" s'il a son fondement dans les Idées morales.

225. [Le sublime kantien] a des frères, toute une génération d'autres individus sublimes. Je ne peux ici en détailler la collection, ne serait-ce que celle que Kant énumère, la "colère", le "désespoir révolté", le repli sur soi, la "tristesse" ou le "chagrin", "l'inaccessibilité [de l'âme] au danger", "l'humilité", la droite et libre "admiration" de Dieu, sans oublier le "devoir, nom sublime et grand". [...]. Devant une telle variété, le démon de la taxinomie anthropologique n'est pas loin de reprendre possession de l'esprit criticiste [...].

"L'intérêt du sublime", pp. 176, 177

226. For the full development of this thesis, concerning the empirical anthropological deconstruction of the opposition between "disinterested" sublime feelings and feelings that can be cognitively explained according to given causes, the reader should refer to Jacques Derrida's La vérité en peinture. In

particular, the "Le sans de la coupure pure" and "Le colossal" sections of the book investigate and criticise Kant's theory of the sublime as it is advanced in the Critique of judgement. Derrida notes how Kant's argument depends upon an anthropological survey in order to justify the pure ("la coupure pure") disinterested nature of the sublime feeling. He suggests that, even if that survey is analogical in the way it explains the disinterested aspect of the sublime, it still allows for a comparison, an anthropological comparison - according to the measure of man - of the sublime and the non-sublime:

Kant will have introduced a comparison where, he says, there should be none. He does this, he lets the comparison appear, in a very subtle manner. Not by re-implicating size within the comparable, but by comparing the comparable to the incomparable.

Kant aura introduit la comparaison là où, dit-elle ne devrait pas avoir lieu. Il l'introduit, il la laisse s'introduire de manière apparemment fort subtile. Non pas en réimpliquant la magnitude dans le comparable, mais en comparant le comparable à l'incomparable.

La vérité en peinture, p. 157

The above remarks should be taken in conjunction with my study of Derrida's "Devant la loi" and "Economimesis" in chapter II of my thesis.

227. Le travail est soumis à la règle de l'échange deux fois. Les conditions de travail en système capitaliste résultent toutes de l'hégémonie du genre économique où il s'agit de gagner du temps. Par lui-même, le travail ignore cet enjeu. Il y a un différend insoluble entre travailler et gagner du temps. Les sentiments (tristesse, colère, haine, aliénation, frustration, humiliation) qui accompagnent les dites conditions de travail naissent de ce différend et le signalent.

Le différend, p. 254

228. I am put in mind, here, of Michel Serres' stunning survey of feeling and sensibility in his book Les cinq sens. Serres' study demonstrates how an appeal to the category of the sublime is unnecessary in the task of the differentiation of feelings.

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