

SHIFTING THE GROUND OF THE MORAL DOMAIN IN LYOTARD'S *LE DIFFEREND*

Adi Ophir

In what follows I would like to present a major shift in the nature and domain of moral theory implied by Jean-Francois Lyotard's *Le Differend*.¹ Lyotard does not argue explicitly for this shift, and my attempt to reconstruct it will be analytical rather than interpretative, ignoring (for the purpose of this paper) other works by Lyotard and other issues of related interest in *Le Differend*. Explicating the implications of a few passages, mainly the definitions of 'differend', 'victim' and 'wrong' (*tort*), I will articulate the type of moral discourse called for by Lyotard's text and delineate the new horizons of the moral domain within which such a discourse operates. The results of my analysis may contradict other things Lyotard says, means or implies in other places, and I will not try to reconcile the tensions thus created. Lyotard's text is but a ladder here; what is at stake in this discussion is not the ladder but the horizon of the moral domain opened from the height of the roof. But it is obviously more than a ladder; it also offers a way to look into "the ethical turn" in postmodern or post-structuralist philosophy, being its most perfect example.²

I. Differend

The point of departure for Lyotard's work since the mid-seventies is a basic Wittgensteinian insight: language games are heterogeneous; one always pays a price for switching games; not only meanings and frames of reference change, but also the status and positioning of the addressor and the addressee. Lyotard replaces language games with what he calls "phrase-regimens" (which may also be described as types of speech acts, e.g., prescription, question and answer, the narrative, the argument). These serve as building blocks for larger units, "genres of discourse." Genres constitute the various stakes for which phrase-regimens are combined, determining legitimate and illegitimate ways to combine different regimens. No genre of discourse is capable of subsuming all the others under its rules; no meta-language can allow or guarantee the free passage from one language game into another. Metalanguage is a language game like any other – ultimate foundation, final synthesis, in short any attempt to impose a 'One' over the many is doomed to throw another pretentious 'one' among the many. Granting this heterogeneity, one is immediately faced with the permanent, irredeemably

agonistic predicament of knowledge, ethics or aesthetics (Preface, thesis). The co-existence of multiple, distinct, and heterogeneous genres of discourse gives rise to conflicts and 'differends'.

At first sight, 'differend' is the result of an undecidable dispute, "a case of conflict . . . that cannot be equitably resolved for lack of a rule of judgment applicable to both arguments" (*Title*). It is an aporetic stalemate, what the Talmud's rabbis called *teiko*, the inevitable tie between two competing genres of discourse in the absence of a third instance to adjudicate between their conflicting claims, that necessitates the postponement of the decision until the coming of the Messiah. But, against some interpreters, *differend* cannot be simply reduced to incommensurability, for when a differend takes place, incommensurability results in a wrong done to one of the parties in the dispute.³ As a matter of fact, between two real antagonists there exists no tie. If both share the same genre of discourse, the two parties are not really antagonists, the case may be decided through "litigation" before "a tribunal" of unbiased arbiters (at least an appeal to such a tribunal is possible and the judges perform their role within an agreed genre of discourse, in a way that seems to presuppose Apel's or Habermas' notion of rational communication).⁴ But when there are two conflicting regimens or genres of discourse, one of the parties must join the discourse of the tribunal, otherwise no appeal can be made at all. This means that once such an appeal is made, when one party's genre of discourse is imposed on the other party, the case has already been decided, one party has already lost.

When a *differend* occurs, the discourse of one party is excluded from the outset, for it is foreign to the genre of the tribunal. The claims of this party will be dismissed without even recognizing them; as long as the discourse of the tribunal holds sway, nobody will even recognize the wrong (*tort*) done to the losing party, who becomes for this reason a victim (Preface, *title*; 7; 9). A *differend* is therefore an implicit tie that has not been realized with a victim that has not been recognized.

II. Damage and Wrong

Silencing competing genres of discourse may be brutal or gentle as one wishes, but it is inevitable; it is a temporary condition for the possibility of conducting successfully any particular genre of discourse. Lyotard seems to apply to phrase-regimens what Hobbes says about the state of nature – a war of all against all. To be engaged in a certain discourse is to accept the possibility of wrongs being perpetuated as a result, and also to be constantly exposed to discursive damages, i.e., to the loss of means to prove damages. Some of these damages are short lived and therefore are not really relevant from a moral point of view; after all, speakers may constantly change positions and may find compensation in one genre of discourse for the loss of means of expression they have suffered in another. But when the loss of means to prove a damage is a permanent state, one becomes a

victim of a wrong. "One is a victim when one is not able to prove that one bears a wrong" (9).⁵

One becomes a victim when, due to unfavorable discursive conditions, one cannot express one's loss or suffering as a "damage" that deserves restitution. But note that first there must be a damage that cannot be expressed, otherwise there is no wrong (*tort*) and no victim. The moral moment comes in when "a damage is accompanied by the loss of the means to prove the damage" (7), which is Lyotard's definition of a wrong. Put in this way – which I prefer, without trying to resolve some of Lyotard's inconsistent formulations – damages come first, the loss of means to prove them is secondary.⁶ For a wrong to occur, silencing must relate to the expression of some damage. In fact, silence may be merely the sign of *differend*, not its cause, and a wrong may be the cause of *differend*, not its consequence: ". . . a *differend* is born from a wrong and is signaled by silence" (93); when there is a *differend*, a damage has always already occurred.⁷

The expression of a damage is an appeal (explicit or not) for its restitution. The relation between a damage and its restitution is a semiotic one. Once an appeal is made, a damage has been ascribed an exchange value and is functioning within a definite semiotic space. The surface where the damage has been inscribed – body, soul, property, field of free action – becomes a text to be interpreted; the damage "itself," a violated body, a broken heart, or a destroyed property, is a signifier whose signified is an exchange value (and hence a possible compensation) within a definite system of exchange. A wrong takes place when either one's loss or suffering cannot be given a determined signified (or value) and cannot be reified in the language of exchange, or, if it can be reified, the exchange is blocked for lack of currency – the damage cannot be established.

This semiotic situation is perceived differently from the three points of view involved in the *differend*. From the victim's point of view, when a wrong takes place, signifiers of her suffering or loss are not exchangeable, they are left without signifieds; from the tribunal's point of view, these signifiers are not inscribed in the text to begin with; finally, from the witness' point of view, there are only traces of the suffering whose signs have been erased by a state of *differend*. In other words, for the victim – an excess of the signifier; for the tribunal – due process of deciphering and interpretation; and for the philosopher-witness – suffering under erasure. Lyotard can actually be read as spelling out the ethical meaning of "*différance*" as a general discursive predicament. Litigation, through which two disputing parties come to terms, and which causes no wrongs, by definition, may be described as a situation in which the two parties have agreed to the way a particular genre of discourse eliminates the traces of *différance*, especially the *différance* involved in the expression of suffering and loss, to the form of its erasure. *Differend* is a situation in which one party is forced to accept the form of *différance* imposed by another, and is thus prevented from signifying and exchanging that which could have been reified and commodified.

Lyotard's definition of 'wrong' may seem arbitrary. Why should a wrong be

only “a damage accompanied by the loss of means to prove the damage”? Why only damages and why this restriction to the means to prove them? Indeed, the definition is never defended in the text. But it is not arbitrary; it rests upon – or can be attributed to – a basic insight into the nature of the moral domain. (That the insight is so basic – but not self-evident – may explain why it is never defended.) It is the following: indifference to suffering is the limit of the ethical.

According to Lyotard, a wrong occurs because one is incapable of proving, in the language of the tribunal, a damage one suffers; around the inexpressible or indeterminable damage more suffering accumulates, and the tribunal is deaf to this suffering as well. The victim is the one whose complaint has been silenced; the victimizer is the one who has become deaf, i.e., indifferent. The prevailing, dominant discourse is indifferent to the victim’s damage, let alone to the suffering or the loss for which “damage” is a reifying expression. It is this indifference on the side of the dominant discourse, and not necessarily the very loss of discursive means on the victim’s side, that makes the damage into a wrong. Indifference towards the suffering of another is the limiting horizon of the moral point of view and a demarcating principle of the moral domain. Indifference towards the suffering of another is the limit of the ethical in the same way that indifference towards the un-true or what is false is the limit of the epistemic domain. Science, or more generally, the quest for knowledge, begins where this latter indifference ends; ethics begins where the indifference towards the suffering of the other ends.

But whose wrong is it when a damage cannot be expressed or established? The first thing to note is that the definition itself is indifferent to the particular nature of the damage; it ignores the damage’s quality, quantity, causes and effects. A wrong is not related to the motivation of the agent who has caused the damage or to the condition of its occurrence. A wrong is determined by the discursive conditions that allow or prevent a successful transcription of suffering or loss into the genre in which they can find both expression and exchange value, i.e., can be articulated as damages. When one is capable of proving a damage one has suffered and is also properly compensated for it, there is neither a victim nor a wrong. When an appeal is made and considered, and a compensation demanded, the wrong is anticipated and suspended; when the compensation is received, the suspended wrong is eliminated and the entire interaction remains within the amoral space opened between the contingencies of bad luck and the necessities of the exchange system.

The interaction that results in a wrong is a discursive one. From this a clear distinction follows between the agent of the damage and the author of the wrong related to that damage. The author of the wrong is not responsible for the occurrence of a damage but for imposing, or even for participating in the reproduction of the discursive conditions that makes it impossible to express the damage and establish it as a matter of fact. Such an impossibility is the result of anonymous, often unrecognized rules of discourse, which speakers assume, but don’t necessarily choose.⁸ It means that a wrong can be inflicted without any particular

speaker being blamed. Since it is not easy to ascribe responsibility for rules of discourse, it is not clear what is left of the very idea of moral responsibility. I will not deal with this question any further here, except to note two interesting options opened at this point: responsibility may become an impersonal matter whose account should ignore the notion of the subject altogether; responsibility should be explicated as a matter of kinds and degree of cooperation with, and participation in an already established, wrong-inflicting system. In such a case, critique, whose task is to articulate and problematize discursive conditions, becomes an indispensable component of moral responsibility; to assume moral responsibility means to have gone through a certain critique.

An example may clarify the distinction between the author of a damage and the author of a wrong, taking the argument one step further. A thief is brought to trial. On the one hand, he does not do any wrong as long as the owner whose property has been stolen can prove the damage she suffers and can be compensated for it (by the criminal, by the State, or by the insurance company – it does not matter). Some loss related to the theft may be left inexpressible in the language of the tribunal and hence cannot be compensated for. This is an important discursive feature of the moral situation, yet it is not the fault of the damaging agent but of the discursive conditions that enable and prevent both the expression of the damage, the appeal, and the compensation.

On the other hand, once caught, brought to trial, convicted and arrested, the thief himself becomes a victim (unless he has read Hegel's *Philosophy of Right* and has incorporated and reconciled himself with the notion of justice of the system that brought him to trial). The tribunal was forced upon him to begin with, and later, after being convicted and after all his appeals have been dismissed, no tribunal is prepared to listen to his complaints any longer. He cannot prove the ongoing damage done to him by the State. A growing gap is opened between, on the one hand, the property owner, the temporary victim of the theft for whom justice was rendered, and, on the other hand, the thief who has become a victim, inflicted by a wrong. If the thief and the owner are caught in a closed system, e.g., a Greek polis, justice for one is wrong for the other, and inevitably so. In societies like ours, where systems multiply and are open-ended, the two are almost unrelated. There are social mechanisms that render justice; others produce and distribute wrongs.

First and foremost among the latter is the State and its apparatuses. In the case of the thief, one may consider Marx's point about the State being the "form in which the individuals of a ruling class assert their common interests," and the possibility that the institution of private property as a natural "given" by the bourgeoisie may have created a *differend* between the discourse of property rights and certain discourses of needs. More generally, one should remember that the State has a monopoly, which is not self-evident or natural, over the genre of discourse used in property disputes and over the power to bring litigation to an end; and whenever litigation is brought to an end someone is deprived of the necessary

means for further argumentation and is therefore victimized. The inevitability of the wrong one suffers when justice is rendered to another has little to do with the particular nature of the State and its punitive system;¹⁰ it is a result of the very existence of a legal apparatus that brings litigations to an end.

The State's judicial system may be committed to due process and let anyone prove damages inflicted by the State that brings one to trial. But the criminal, let alone the conscientious objector or the rebel, are deprived of means to establish the damages caused by the force of the law itself, i.e., by the imposition of a particular tribunal and the obligation to prove oneself innocent or wronged before such an imposed tribunal. Theories of justice of different sorts, from Plato to Rawls and Habermas, try to restrict this opposition and the oppression involved in it, and to legitimize the oppression limited by those restrictions. They construct bridges over the hiatus between the discourse of the forced defendant and the genre of the always enforcing or imposed Law: "The normative is a phrase about a phrase, a metalanguage . . . its metalinguistic constitution marks the function of authority: to throw a bridge over the abyss between heterogeneous phrases" (207). But such a bridge – this has been our point of departure – is impossible. The normative phrase constitutes a transcendent "we," or a substitute for such a we, whom it represents. It is from this "we" that the normative phrase draws its own authority to represent and to confer legitimacy on the process through which a "we" appears, which is at one and the same time the main speaker and the origin of speech itself. Authority – the one armed with "the force of law", or with "the force of the better argument" – is thus enclosed within a circle of self legitimation or thrown into an infinite regress.

III. Moral Critique

Norms are either foundationless or self-founding; justification cannot bridge competing norms if they belong to different genres. Justification presupposes one tribunal and excludes others, but it is this very exclusion which is at stake in moral critique. What is at stake in moral critique is not norms, values, or rules of conduct but victims and their unrecognized loss and suffering. Lyotard uses a (quasi?) "transcendental description of discourse"¹¹ in order to perform a radical shift of the moral domain. Discourse is a field of multiplicity, heterogeneity, and competition, a battle field of all against all; there is no sense in trying to extract from it procedures for the justification of norms. Norms, even those born in pure hearts within a just society, legitimize victimization. This is what they are made for – to establish wrongs through justifying certain rules of discourse: laying the foundation, if you wish, for procedural injustice. Whereas victims, even those who have defied norms, always suffer. Victims suffer by definition: they are bearers of damages which cannot be expressed. Suffering and loss are blind signifiers; they designate precisely that which remains inexpressible in the genre of the tribunal that fixes the terms for damages and their compensation, i.e., that genre

that transforms suffering and loss into some language of the exchangeable: money, goods, time, services, etc.

Values or norms are made to justify action, but in order to do so one first has to encode human behavior within a grid that makes the moral reading of this behavior – and hence its justification – possible. In most moral theories, both ancient and modern, a set of privileged values (or norms) serves as a code for the moral interpretation of human behavior, of the goals one pursues, the means one employs, and the suffering and losses one bears.¹² One interprets moral phenomena as one used to interpret astronomical phenomena in medieval astronomy – the geometrical model is preset; the task is to save the phenomena, i.e., to save their description from going astray, from deviating from what the model prescribes; and if necessary, some epicycles may be added. By analogy: the justificatory model is preset; the task is to save the phenomena, i.e., to save their moral description from deviating from what the model prescribes; some *ad hoc* procedures (usually called “distinctions”) may be added if necessary.

Lyotard’s definition of wrong inverses this relation. Instead of reading suffering and loss in terms of justifying norms or values that prescribe their infliction or prevention, one reads now values and norms in terms of the damages, suffering, and loss they justify or condemn, call for, allow, or prevent. Instead of exercising the moral code in order to extract the moral meaning of a particular action, social system, or historical situation, one is now called to exercise a moral critique that would extract the discursive conditions of a particular set of moral codes and look for those experiences whose expression these conditions repress. This is what I understand by Lyotard’s plea to bear witness to differend.

But can one do this (i.e., tracing cases of differends) without producing or reproducing more differend, causing more injustice, inflicting more wrongs? No. The genre of the witness, or, on a more abstract level, the critical genre, are not immune of the predicament of any other genre of discourse; they too are engaged in the discursive war of all against all. This is why discourse of this kind must be philosophical, which means, for Lyotard, being provisional in principle, having its *a priori* at stake, always looking for its own rules (98), i.e., always having at stake the *differend* created by its own rules. The discourse whose stake is the description of suffering must constantly relate to itself, posing itself as part of its referent (a part only, and not always a very important one; in this sense it differs from other forms of philosophical reflexivity). This is a discourse whose ground is constantly shifting, whose ends are always loose, unstable, indefinite, skeptical through and through.

There is however a difference of kind between recognizing *differend* and recognizing excessive, preventable damage. The first kind of cognition requires recognizing the co-existence of multiple, heterogeneous genres of discourse. The second kind of cognition requires the (at least provisional) acceptance of one “map” which describes, according to the rules of a particular genre of discourse, the reality of evils’ distribution that affects speakers of different, heterogeneous

genres of discourse within a definite social space.¹³ Moral discourse must be attuned to these two kinds of cognition at once, exercising a kind of “two tier thinking,”¹⁴ and it should constantly, even if hopelessly, try to correct one tier with the help of the other. Self-reflexivity is a necessary condition for critical moral discourse, but it is not a sufficient one.

The pragmatics of the moral-critical phrase is determined by the two-tier structure of the object (referent) of this phrase. If a wrong is “a damage accompanied by the loss of means to prove the damage,” then the victim can prove neither the damage nor that the damage is not expressible in the language of the tribunal. At one and the same time she is denied two kinds of truth claims: a). “this is a damage inflicted upon me”; b). “I cannot prove this damage before that tribunal.” The first kind of truth claims concerns tangible visible matters, actions, faults, and misdeeds, and their damaging effects; the second kind concerns the intangible conditions of discourse that prevents the articulation of the tangible and then renders the visible invisible. One becomes a victim because one is incapable of expressing or proving these two truth claims at once.

The truth claims the victim is denied are phrases that belong to two different layers of discourse and reality: the reality of the damage; the reality of the discursive conditions that prevent one from expressing one’s damage (or from proving that it was preventable or unjustified). But there is no discourse yet that allows such assertions. How does one know that (where, when) a *differend* has taken place? At most, one witnesses the silence of the victims or other signs that betray the existence of a *differend* (93). Signs do not suffice, however, they merely call for an articulation of something which has not found an expression yet. There must be a second tribunal in which both the damage and the discursive conditions that prevent one from establishing it can be expressed and established, i.e., described and shown.

Is the appeal to a second tribunal really necessary? Lyotard sometimes seems to be interested only in the suspension of the former tribunal, in fact of any tribunal, replacing the *differends* of judgments with deferment of judgment (see e.g., 254) which, paradoxically enough, seems the only possibility of justice.¹⁵ Philosophical discourse that looks for its own rules, trying to bypass its *a priori*, is a tireless effort of suspension, which the metaphor of the archipelago and of critical discourse as an attempt to explore passages among the islands of reason (*Kant, Notice 3, 1–2*) captures nicely. Philosophizing means wondering among discursive islands, deferring as long as possible the moment of coming a shore. But this elegant picture of critical discourse ignores the fact that once there is a phrase there is an appeal to a tribunal capable of judging its validity claim. Moreover, such a picture establishes a radical difference, which only rhetorical navigation can maintain, between philosophical discourse and other critical practices that live and prosper on many discursive islands.

The philosopher, Lyotard says, bears witness to *differend*. Even if the philosopher is the only type capable of the task, even if she is the only possible witness,

one may still look for that tribunal before which the philosopher takes the witness stand. Who is responsible for looking into the testimony, checking the evidence, calling more witnesses? There must be a second tribunal for the philosopher's testimony. And, despite Lyotard, the critical phrase does not stop at bearing witness; it turns the "old" tribunal into an object of a transformed discourse, displayed before a displaced tribunal.

The critical phrase displaces the dispute and transcribes it into a different genre of discourse. The difference between these two genres and their corresponding tribunals is not necessarily a difference of "paradigms," and bridging the gap is not necessarily a matter of translation. The problem is not that of misunderstood meanings but of re-demarcation of universes of referents, and repositioning addresses *vis-a-vis* addressors. The difference concerns the restitution of an alternative "we" that would authorize one to prove the reality of a hitherto unprovable damage. At the same time, critical displacement means an appeal to a "we" capable of identifying "discursive conditions of inexpressibility" or, in other words, of identifying a tribunal capable of looking at the rules of another tribunal, positing them as objects in its own universe of referents.

Let me allude here briefly to an Israeli example of such a critical displacement. *Betzelem*, the Israeli organization for human rights in the Occupied Territories, established some years ago an alternative tribunal in which Palestinians could prove damages inflicted upon them by the various apparatuses of the Israeli State. *Betzelem* uses a quasi-legalist, universalist language of human rights and their violations. Israeli Jews know this language pretty well when their own rights are violated, or when Jews are oppressed somewhere else on the globe. *Betzelem's* crucial contribution has been to let Palestinians articulate the damages they have suffered in the language of human rights, i.e., let them become addressors of phrases describing these damages before a tribunal Israelis still control, yet before which they are nevertheless forced now to take the position of the accused.¹⁶

IV. Suffering and (In)Difference

Moral critique is not simply part of philosophy, that genre that "has as its rule to discover its rule" (98) only in order to escape or transgress it. Critique is this as well, and necessarily so, for it cannot leave its self-made *differend* unnoticed. But moral critique cannot stop there, it cannot indulge itself with itself forever. Bearing witness to *differend* means first and foremost being concerned with the rules of another discourse. Thus even when it is concerned with itself, it is already concerned with another, for the self has been posited as an object for a new positing subject, a new addressor of a new the critical phrase.

But even the existence of a second tribunal and genre of discourse does not suffice. The critical phrase that asserts the reality of the discursive conditions is a complex one. It presupposes the ability to move between two or more genres of discourse, to compare the "repressive" discourse which renders damages of a

certain sort unprovable, with the “liberating” one through which the unsaid (suffering or loss) becomes expressible and can be demonstrated. The critical phrase must also be capable of seeing through the practices of the “repressive” discourse to the mechanisms that set limits to the sayable. The discourse to which such a phrase belongs is capable of moving freely in and out and between several heterogeneous genres of discourse, but also between the referents of a phrase and the rules that govern its legitimate links with other phrases (i.e., between discourse’s two tiers). In other words, the reflexive discourse that articulates “moral facts” must recognize discursive conditions and practices as part of the domain of the real in which damages and victims appear and take place.

Hence moral discourse is a comparative one. But the comparison is not between the ideal and the real, or between a norm and its applications. Comparison in this case is performed entirely in the domain of the real; no value, norm or ideal is postulated. There need not be even an appeal to what Lyotard is so fond of, a Kantian Idea of Reason, of e.g., happiness, in the sense of a world devoid of suffering.¹⁷ Compared now are tribunals, genres of discourse, recognized and unrecognized damages, number of victims, magnitude of damages, mechanisms of victimization. Conflicting values and norms are seen through these comparisons; there is no ought which is not dependent on them, no imperative which is not conditioned by them. All there is to be considered is the production of victims, its modes and conditions, and the means of their reproduction. Moral critique has been absorbed into the domain of cognitive, descriptive discourses, it speaks the language of the real.¹⁸

What is at stake in moral judgment is comparison and measurement: of damages and suffering, victims and victimization. Measurement, however, requires a scale, comparison presupposes evaluation, and both presupposes a scale of values. But how should one arrange different values into a scale? According to which scale should one measure different violated norms? How to guarantee a common space to values as different as “freedom,” “equality,” “respect,” or “friendship”?

Suffering, I would like to suggest, is the only possible common space that can be shared by values and norms of different sort. Moral rules and universal rights can and should be measured and arranged hierarchically according to the damage and suffering they are meant to prevent and are capable of minimizing, and according to those they impose or make possible. Suffering is the mediating space through and within which values and norms should be articulated. This does not mean, however, that there is a special genre of discourse for the expression of suffering or that such an expression is “primordial” in any sense.¹⁹ The description of suffering must be done within a genre of the discourse that gives up in advance the position of a metalanguage, and recognizes the existence of heterogeneous, competing genres. Moreover, even without being challenged by competing genres, the description of suffering must always be aware of the irreducibility to discourse of affection in general and of suffering in particular. There will

always be a surplus of pain in wounded bodies and of agony in souring souls that discourse cannot articulate. If one can imagine an exchange between suffering and the words that mean to substitute for it, discourse will always remain indebted to suffering.²⁰

And yet, the description of suffering should not be mistaken with vain attempts to match words to that which no word can contain. Suffering is a result of hurts, harms, injuries, and losses. These evils too often have patterns and regularities, logics of production and dynamics of dissemination and distribution, which can be mapped onto an entire social space. Moral discourse must place the cartography and economy of human suffering before the deliberation of rights and the justification actions.

Take for example the violation of basic human rights in “emergency situations” (e.g., torturing a terrorist before a bomb he planted goes off; denying a racist his freedom of speech during a volatile social conflict). The restriction of rights is often justified by the excessive damage that the exercise of the right in question may cause. But since the evaluation of the expected damage is very problematic, one may still seek recourse to a scale of rights and look for their unrestricted protection: universal rights, no matter what. Rights defend one against attempts to abuse the valuative deliberation and provide a mechanism of litigation between competing evaluations. However, the *differend* between the language of human rights and other genres of discourse that express kinds of suffering and damage which rights do not recognize cannot be resolved. Recognizing this fact, one may at least consider all those who may be affected by the consequences of a given action or a questionable social procedure: universal protection, no matter what.

The justification of administrative arrests, torture of terrorists caught in action, or demolition of terrorists’ houses (depriving innocent members of their families of their basic rights)²¹ could be invalidated in principle, calling upon universal human rights, which are applied in an abstract and decontextualized manner that weakens the argument considerably. The same action can be invalidated in a much more nuanced manner, however, which takes into account the details of the concrete situation, if the suffering of all those involved would be taken into consideration. For example, Israeli legal and political discourse could always find justification for violations of human rights on the basis of “security reasons” and other kinds of *raisons d’etat*, because it has never considered seriously Palestinian anguish and distress, tending to restrict its account of suffering to the Jewish population. Once this account takes notice of Palestinians as well, the wrong caused by at least some of those practices becomes evident.

It is, of course, always possible, in fact inevitable, that an attempt to bring into consideration the other’s plight would leave much unsaid about the other’s suffering and damages. But the moral description of suffering is a genre which is always willing, in principle, at least, to listen to the inexpressible and correct its evaluation of the expected or inflicted suffering accordingly. Moral judgment is a judgment of facts – who suffers, which damages, how many, how often, how

systematically – but it is done in a genre of discourse that is never sure of its own rules, a discourse always on the alert to that which it cannot capture, trying to respond to that which it cannot express. There are other cognitive genres of discourse that display the same kind of sensitivity towards the unsayable (e.g., a certain type of anthropological writing or historiography). Instead of trying to draw a distinction between the two types of genres by introducing the language of “duty” and “ought,” emphasizing the heterogeneity between descriptive and prescriptive phrases, one should better recognize the moral dimensions of these branches of knowledge.

But isn't there a value and an imperative implied in these considerations as well, a value and an imperative which should guide critical moral discourse *a priori*? The value is the equality of all beings capable of suffering (animals included²²); the imperative prescribes: “always consider the suffering of all those concerned in a moral situation.” This principle, the principle of “universal account of suffering,” seems to be an “ought” which moral judgment presupposes *a priori* and which only “meta-ethical” considerations can validate; in order to do so they, in their turn, must be founded on something else. Have we come back to a foundationalist ethics, then?

The question is mistaken. It is based on a kind of *trompe l'oeil*. The universal value and the imperative it implies are merely a projection: a basic rule of moral discourse qua description of suffering is being projected from the pragmatic layer of the discourse into its semantic layer: a rule that defines the game or constitutes it becomes one of the stakes within the game, or better one of the entities that lies within its frame of reference. The constitutive rule becomes a value among other values, part of the contents which this discourse is about. The comprehensive description of suffering is not a rule which moral discourse can justify, for this is a rule it presupposes. Not to describe the suffering of all those affected by a social interaction is an unjustified restriction imposed upon discourse's space of referents. It is as if one restricts observation of moving bodies to the sublunar sphere, or observation of viruses to the bodies of those already sick.

This illegitimate transcription of a rule from the pragmatics into the semantics of discourse resembles what Lyotard, in a different context and using the jargon of Greek rhetorics, calls *metalepsis*. When Plato appeals to his audience, he performs a *metalepsis*. He transfers his readers or listeners from the position of spectators that may deliberate and debate the dialogue's form vis-a-vis other forms of speech (e.g., sophistry, poetry), to the position of Socrates' addressees, who considers his truth claims and deliberate the contents of his speech, having already accepted the rules of his game (Plato's Notice, *Metalepsis*).²³ Plato, just like the one who raises the meta-ethical question, performs a leap from discourse's pragmatics to its semantics. In both cases the move is not legitimate: it cannot be accepted according to the rules of the genre in question (dialectical dialogue, moral discourse) – for this would beg the question, and it cannot be rejected once one is already playing the game – for this would contradict one of the game's constitutive rules.

What then distinguishes the description of suffering in moral discourse from the description of moving bodies in physics and astronomy, or of viruses in biology and medicine, and even more so from the description of suffering in the books of history or medicine? After all, tracing invisible entities, interpreting signs of that which is not yet present and cannot be expressed in the language of the authorized discourse, all these are common (even if not permanent) features at the frontier of scientific research. And the reflexive nature of moral discourse is not enough to provide for its demarcation and account for its special features: at least, at some point in its history a scientific discourse may be engaged with reflection over its own rules. It is the special nature of the referent – suffering – that makes the difference.

The referent is the same for moral discourse, or for the history of medicine, or of the working class. Except for this: in a history of the working class in, e.g., 19th century England, one finds descriptions of the suffering of men, women and children who belonged to that class as part of the “experienced” (*vecu*) dimension of its social conditions, but this experience has been objectified completely; moral discourse, on the other hand, let suffering be presented as a phrase, and it places the reader or listener of this phrase in the position of its direct addressee. In moral discourse – and this is another one of its constitutive rules – the reality of suffering is the reality of a phrase. “*Il arrive*,” it happens (cf. 111, 131–2, 172–3), it situates you as its addressee, and it addresses you with a demand. It calls upon you, it makes you responsible, since you have already heard it. In order to become fully moral, the cartography of suffering must turn into (or be accompanied by) an economy of alarm calls.

A continuous line can be drawn at this point from face-to-face presence of daily suffering, its presentations and representations in the media, especially on television, its representation in political speeches, religious sermons, literature, poetry and the arts, up to its accounts in social theory and moral discourse. Placed within this wide cultural spectrum, the task of critique as a moral discourse should be reformulated. This task would not be simply or even primarily to give to suffering its means of expression or to describe new domains of victimization, hitherto unnoticed, and expose their invisible mechanisms. Postmodern culture is overcrowded with such descriptions, some of them presented every night live on our screens. The reconstruction of these presentations and representations, and their representations as phrases that place their viewers or readers as direct, responsible addressees – these are the stakes in contemporary moral discourse.²⁴ The reconstructed moral phrase makes its addressee responsible in that it opens for her or him the possibility of a response to an Other’s plight. You are responsible since you have already heard her suffering as a phrase, an appeal, a request, a last minute call; you have understood it, and you can at least repeat it. In other words, at stake is not simply the recuperation of a moral point of view (this has to do with the cartography of suffering and its economy), but the recuperation of a moral response-ability.

NOTES

1. Jean-Francois Lyotard, *The Differend: Phrases in Dispute* (Minneapolis: University of Minnesota Press, 1988). Translated by George Van Den Abbeele (*Le Differend*, Editions de Minuit 1983). Unless otherwise indicated, all references below are to paragraphs numbers and titles in this text.

2. On the “ethical turn” in postmodern philosophy, and especially on the ethical dimension in deconstruction and its reappraisal in the secondary literature see, for example, Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989); Jacques Derrida, “Force of Law: ‘The Mystical Foundation of Authority’,” *Cardozo Law Review* 11 (1990): 919–1045; Jean-Michel Rabate et Michael Wetzell, *L'éthique du don: Jacques Derrida et la pensée du don* (Paris: Metailie, 1992); Simon Critchley, *The Ethics of Deconstruction: Derrida and Levinas* (Oxford: Blackwell, 1992); Stephen K. White, *Political Theory and Postmodernism* (Cambridge: Cambridge University Press, 1991); Axel Honneth, “The Other of Justice: Habermas and the Ethical Challenge of Postmodernism,” Drucilla Cornell, *The Philosophy of the Limit* (New York: Routledge, 1992); Robert Bernasconi, “Deconstruction and the Possibility of Ethics” in Gary B. Madison, ed., *Working Through Derrida* (Evanston Ill.: Northwestern University Press, 1993).

3. This reduction can be found among critics and friends alike. Three examples should suffice. David Carroll (*Paraesthetics: Foucault, Lyotard, Derrida* [London: Methuen, 1987]) associates *differend* with “tensions and irresolvable contradictions” (183), and defines it as “a situation where what cannot be said,” because it is “not permitted to be phrased according to the linguistic, philosophical, and political rules governing discourse,” must be said nevertheless (31–2). In his glossary to key terms in Lyotard’s work, Bill Readings refers under the entry “*differend*” to “the point of incommensurability,” and does not mention its relation to the infliction of wrongs (*Introducing Lyotard: Art and Politics* [London: Routledge 1991, xxx]). Axel Honneth (“The Other of Justice”) too puts all emphasis on that “strict incommensurability,” the result of a “collision of two sentences belonging to different genres of discourse [when] . . . no rationally verifiable transitions between the various language games” is available (6).

4. Cf. Honneth, “The Other of Justice,” 4–9.

5. I have a slightly changed Abbeele’s translation: “*Il est d’une victime de ne pas pouvoir prouver qu’elle a subi un tort.*”

6. Since silencing competing phrases has become, under Lyotard’s description, so pervasive, mere silencing cannot be a sufficient condition for wrongs to occur, otherwise the notion would lose all its distinctiveness. Besides, it is not clear whose damage it is when a phrase is silenced after linking a different phrase to a former one. Similarly, it is not clear what it means for phrases to do wrong to other phrases (see e.g., 92), especially since, according to Lyotard’s definition of wrong (7), a wrong presupposes an inexpressible damage. I will therefore stick to what seems to me Lyotard’s clearest and most fruitful formulation which explicitly associates *differend*, damage and wrong.

7. That “it is necessary to link, but the mode of linkage is never necessary,” (41) does not mean that linking always causes wrongs, only that any linking of phrases opens the possibility to perpetuate wrongs. Silencing of phrases perpetuates wrongs only when damages are at stake. At this point I differ from other interpreters who restrict Lyotard’s moral claim to the moment of silencing. For example, Honneth, who is well aware of the moral significance of the linguistic predicament in Lyotard, ascribes it to the wrong (“*Unrecht*”) that “the succeeding sentence [always] perpetuates on the preceding one” (6). Cf. also Bill Readings, *Introducing Lyotard*, 117–25; Honi Fern Haber, *Beyond Postmodern Politics: Lyotard, Rorty, Foucault* (London: Routledge, 1994), 19–21.

8. Whether discursive rules are constitutive or regulative, or even no more than regularities that agents follow as if they were rules, does not matter in this context. It suffices that speakers act as if they follow rules.

9. Karl Marx, “The German Ideology,” in *The Marx-Engels Reader*, Robert C. Tucker, ed. (New York & London: Norton, 1978), 187.

10. Liberal democracy is the natural context of this discussion, but Lyotard’s definition of a

“wrong” and its consequences do not assume the existence of any particular political form or social institution. In general, Lyotard presupposes one social bond, discourse, which is always already there, in any other social institution (193–95). This means that his analysis is “value free” in a very special sense of the term. It acknowledges, of course, the fact that any language describing damages and wrongs is value-laden. But the identification of wrongs is value-free, precisely because it is always dependent, and is dependent in the same way, on the language of the specific tribunal authorized to establish the existence of damages, regardless of the particular values articulated through and consecrated by the discourse of the tribunal.

11. In this sense, Lyotard’s ethics of discourse has much in common with Habermas’s. But, obviously, in contradistinction to Habermas, Lyotard bypasses the circularity of justification without dissolving it and does not extract universal norms from the transcendental presuppositions of the speech situation.

12. The distinction between value and norm is another distinction that loses its significance in this context. It matters little if one appeals to just norms or to justice as a value, to norms of friendship or to the value that bears this name. What matters is that a prescription sets the terms for the description of the morally relevant facts.

13. I have dealt with the idea of mapping the distribution of evils in society elsewhere (“Beyond Good – Evil: A Plea for a Hermeneutic Ethics” in M. Kelly, ed., *Hermeneutics and Critical Theory in Ethics and Politics* [Cambridge, Mass.: The MIT Press 1990], 97 ff.). See also, Ulrich Beck, *Risk Society* (London: Polity Press, 1994).

14. I have borrowed the notion from Yehuda Elkana. It designates a fact in the sociology and anthropology of knowledge, i.e., that within the same community or person, a naive realist attitude of a practitioner scientist may co-exist with a reflexive, relativist attitude toward the scientific enterprise. The former seeks to describe things “as they really are”; the latter acknowledges the fact that even science’s most rigid statements are culturally and historically dependent. Cf. Yehuda Elkana, “Two Tier Thinking: Philosophical Realism and Historical Relativism,” *Social Studies of Science* 8 (1978): 309–26. I am not interested, however, in questions of realism and relativism here, but only in the bifocal form of moral discourse: a straight-forward description of facts, i.e., damages, on one tier; a reflexive analysis of discursive conditions on the other tier.

15. This, I think, follows from the emphasis Lyotard places on listening in matters of justice, especially in *Just Gaming*. Listening means postponing judgment; an appeal before a tribunal, especially one that fails to listen, requires one to become an author. But, in the language game in which justice is at stake “the important thing is to listen . . . one speaks only inasmuch as one listens, that is, one speaks as a listener and not as an author” (Jean-Francois Lyotard and Jean-Loup Thebaud, *Just Gaming* [Minneapolis: Minnesota University Press, 1985], 71–2). For a more complex account of deferment of judgment as a condition for the possibility of justice as well as its negation, see J. Derrida, “The Force of Law,” 919–1045.

16. It is still questionable to what extent the quasi-legal discourse of *Betzelem* has been an alternative indeed. Elsewhere I tried to demonstrate a continuity between the language of human rights *Betzelem* uses and its attempt to provide an “objective” description of their violations and the kind of discourse through which Israeli culture and the Israeli state apparatuses grant legitimation to the Occupation. One consequence of this cooptation has been the representation of the violation of human rights as an unbearable exception of tolerable policies and the continuous denial and concealment of the Occupation as a complex mechanism that – in routine and “legitimate” ways – produces, reproduces, and distributes damages to the Palestinian population. See A. Ophir (in Hebrew) “An Objective Description of Moderate Physical Pressure,” *Davar* (June–July, 1991).

17. That is, moral discourse is not about “ideas,” those signifieds that never appear in any perceptual field, or, in a language closer to Lyotard and his Wittgensteinian influence, those entities no ostensive phrase can “show.”

18. Needless to say, this claim goes against Lyotard’s repeated insistence on the Kantian separation among the interests of reason and their respective domains, first and foremost the cognitive and the moral, which, after the “linguistic turn” has become the heterogeneity between descriptive and prescriptive phrases.

19. There is no epistemic or ontic primacy to suffering, or to any other “lived experience,” for

that matter, no immediate access to one's affections, and no means to represent these in a transparent way. The gap, in the realm of affection, between the sayable and the tangible can be compared to (indeed it is the same type as) the one between the sayable and the visible. One can easily apply to the former gap what Deleuze, explicating Foucault, said about the latter: Foucault insists on the "différence de nature entre . . . le visible et l'enonçable . . . parler, ce n'est pas voir . . . [il] maintient la spécificité du voir, l'irréductibilité du visible comme déterminable. Entre les deux [l'enonçable et le visible] il n'y a pas d'isomorphisme, pas de conformité, bien qu'il y ait présupposition réciproque, et primat de l'enonçé. . . . ni causalité de l'un à l'autre, ni symbolisation entre les deux, et si l'enonçé a un objet, c'est un objet discursif . . . qui n'est pas isomorphe à l'objet visible," Gilles Deleuze, *Foucault* (Paris: Minuit 1986), 68.

20. A debt occurs when an exchange has not been completed (242), when "the cession of that thing ought (but fails) to annul the cession of this thing" (240). Between heterogeneous genres of discourse exchange is never complete, debts abound, and yet debts are constantly denied and their traces are systematically erased by a dominating genre that enforces its system of exchange. It is the task of critical discourse to bear witness to debts, not to let them be erased by dominating discourses.

21. All these are examples of acts taken regularly by the Israeli defence forces against Palestinian rebels or "terrorists."

22. A common way to ignore the suffering of others is to ascribe to them different sensitivity. Thus blacks, or lower class people, women, and animals, of course, are often said to be insensitive to that from which "we" tend to suffer.

23. I have elaborated on this point from a different perspective in my reading of the spatial metaphors in Plato's Republic: *Plato's Invisible Cities; Discourse and Power in Plato's Republic* (London: Routledge 1991), ch. 5.

24. For an excellent discussion of mediatic representations of suffering and their effect on the question of moral responsibility, see Luc Boltanski, *La Souffrance à distance* (Paris: Métailié, 1993). The crucial question is how to resolve the contradiction between the accessibility of the information and its quick and easy dissemination and the passivity and impotence of the individual spectator or reader who consumes it.