In this article, I explore what Vogt (2002) calls the "differend" (a term for incommensurability taken from Lyotard) between the philosophies of Jean-Francois Lyotard and Jürgen Habermas. On the one hand, Habermas proposes discourse ethics as a means of legitimating universal norms through consensus; on the other, Lyotard demands that we act justly without criteria and sees totalitarianism concealed in the cloak of consensus. My approach is to explore and develop the (mostly implicit) criticisms that Lyotard levels against Habermas and to attempt to answer them in terms of my reading of Habermas. Where those criticisms cannot be answered adequately, I explore the possibility of a differend between Lyotard and Habermas, and more fundamentally the possibility of differends or incommensurabilities between discourse ethics as an actual practice and aspects of human reality. I endeavor to show that although there are probable incommensurabilities between discourse ethics as articulated by Habermas and, for example, non-Western cultures, with some adjustment, discourse is our best hope for mediating many of the conflicts that plague our world.

I assume a broad familiarity on the part of my interlocutors with Habermas' work, in particular his concepts of discourse ethics, communicative rationality, system, and lifeworld. I begin, nevertheless, by briefly highlighting a few important concepts. Habermas' concept of discourse (hopefully) leading to consensus is based on his theory of communicative action. He extends the concept of reason beyond individualistic and instrumental conceptions — what is rational is what
is likely to succeed—to include communicative rationality, in which
discussants challenge each other to give reasons for their statements and
in which, the only force is the force of the best argument (Habermas,
1984, pp. 100ff). I refer to consensus reached in this way and observing
the rules of discourse,¹ which guarantee full and open participation
to all concerned, “rational consensus.” Habermas maintains that
communicative rationality and, hence, discourse is fundamental to
language as such, and that all human communities engage in it, if only
occasionally and in less than ideal form. That is to say, communicative
rationality and discourse ethics would be a culturally neutral means
of legitimating universal norms; or so Habermas claims (Habermas,
1990, p. 102).

Writing partly in refutation of Habermas’ *Legitimation Crisis*
(Jameson, 1984, pp. vii), Lyotard agrees in *The Postmodern Condition*
that there is a crisis of legitimation, but he positions the cause of the
危机 within an “incredulity toward metanarratives” (Lyotard, 1984b,
pp. xxiv). What he means, in short, is that “we” can no longer believe
in the ideals of the Enlightenment: emancipation, reason, progress,
a single humanity with a single history and destiny (Lyotard, 1984b,
pp. 37-41). Although he writes, “[m]ost people have lost the nostalgia
for the lost narrative” (Lyotard, 1984b, p. 41), it is not at all clear
whether he means seriously to claim that in fact Europeans (with the
exception, of course, of Habermas), no longer believe in those ideals
or that they ought not to believe in them. In either case, Habermas’
program of rebuilding legitimacy through communicative reason,
according to Lyotard, depends on those narratives, and is thus, at best,
a losing game. But indeed, for *The Postmodern Condition*, all fields of
knowledge and of human endeavor are no more than language games,
and any game that interferes with other games, as do the games of the
metanarratives of modernity and the discursive search for consensus,
is thereby totalitarian (Lyotard, 1984b, pp. 65-66). The more one
reads Lyotard, however, the more clear it becomes that he does not

¹Every subject with the competence to speak and act is allowed to take
part in a discourse. Everyone is allowed to question any assertion whatever.
Everyone is allowed to introduce any assertion whatever into the discourse.
Everyone is allowed to express his attitudes, desires, and needs. No speaker
may be prevented... from exercising [these] his rights. (Habermas, 1990,
pp. 89, citing Alexy 1978, p. 40)
give straightforward arguments for definite theses in the way that Habermas does.

The argument in *The Postmodern Condition* is easily demolished in the same manner that Habermas demolishes the arguments of other “postmodernists,” such as Derrida and Foucault, in *The Philosophical Discourse of Modernity*: totalizing critiques of reason invalidate themselves. If *all* use of reason is suspect then the statement “all use of reason is suspect,” together with the arguments leading to that statement, are also suspect, and we may as well suppose that the use of reason is often not suspect. For Lyotard, the various fields of knowledge, and human activity, are no more than so many language games each with its own rules; they cannot, without injustice, encroach one upon any other (as the rules of chess cannot be imposed upon the game of checkers); the incredulity toward metanarratives means that there is no master game or meta-language to coordinate the others (Lyotard, 1984b, pp. 40-41); but if such a master game still existed, it could only be totalitarian and unjust. However, if that is the case, then the argument of *The Postmodern Condition* is only a move in a particular game with no legitimate bearing on the many other games. Lyotard’s critique of the legitimation of the physical sciences, for example, can have no bearing on the physical sciences since they are a different game. His incredulity toward Habermasian discourse is irrelevant to the desirability of that discourse, because it is a different game from the one he is playing (or, if it is the same game, then he is involved in what Habermas calls a performative contradiction).

But this is too easy, suspiciously easy. In *Just Gaming* published the same year, he develops, in dialogue with Jean-Loup Thébaud, the thesis that all fields of human activity are games and that each game must avoid interfering with the other games. In the last line of the dialogue, Thébaud points out that in saying so, Lyotard has made this game, the dialogue, the book, a totalitarian, unjust master game: “Here you are talking like the great prescriber himself…” followed by the final word in the book, “(laughter)” (Lyotard, & Thébaud, 1985, p. 100). Samuel

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2 We might well argue that *The Postmodern Condition* is one of Lyotard’s many contributions to the discourse seeking just resolutions to contemporary problems of legitimation.

3 Making an argument that, taken as an action, contracts the content of the argument (see MC, pp. 95, 99-102).
Weber makes much of the corner that Lyotard has backed himself into, and the "unease" of the laughter (Weber, 1985, p. 104). But again, the criticism is too easy — Lyotard knew what he was doing, and that suggests a less direct approach to reading him. Indeed, at the very beginning of *Just Gaming*, he hints at how he should be read when he remarks that in writing a book he intends to make an impression, and, in some cases (*L‘Économie libidinale*), not expecting any response from readers (Lyotard, & Thébaud, 1985, pp. 3-5). Similarly, in the preface to *The Differend* he writes that he "will never know whether or not the phrases [of this book] happen to arrive at their destination... he must not know" (Lyotard, 1988, pp. xvi).

In "Answering the Question: What is Postmodernism," Lyotard gives implicit instructions for reading his work. Postmodern art, including literature, he maintains, is the attempt to present the unrepresentable, the "differend" (Lyotard, 1984a, p. 81). If this applies to Lyotard himself (he writes: "it is our business" to allude to the unrepresentable (Lyotard, 1984a, p. 81, emphasis added), then we should not expect to read him as a series of propositions and inferences for which he directly claims validity. His arguments are labyrinthine, bending and twisting into paradoxes such that when one traces his way to the end, he finds himself back at the beginning. But perhaps an impression has been made, or an allusion, that could not have been put into propositional form. The text of *Just Gaming* with its self-conscious laughter should perhaps be taken as just a game. *There is nothing but games* Lyotard insists; what he means is: *look to what is not a game, but between the games.*

Reading Lyotard in this way, his central idea comes down not to a proposition, but to a question: *What are we to do after Auschwitz?* "We", of course refers to post-Enlightenment, modernizing Europe. The project of modernity, of Enlightenment, whether or not it can be blamed directly for producing Auschwitz, whether or not, that is, it led inevitably to Auschwitz, led, in some measure at least, to it and must end there. In particular, the totalizing, universalizing notion of humanity as a single subject of history, either as fact or ideal, led to, or at least justified, the attempted total extermination of those not part of that "universal" subject, the *others*. Thus, Lyotard's: "Let us wage a war

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*4See, for example, Bergoffen, "Interrupting Lyotard: Whither the We?".*
on totality” (Lyotard, 1984a, p. 82). Thus, we cannot, or should not, be credulous towards the metanarratives of the Enlightenment (see, for example, TD, p. 89). At the same time, the European “we,” which survived World War II, continues to exist, to eat to sleep to love, and hate, “we” who were and are, in spite of everything, nurtured on the Enlightenment: there is no last moment, no final end. Or as Lyotard has it in The Differend, there is no first and no last phrase: every phrase of necessity must be linked to a next... and a next (Lyotard, 1988, pp. 11, 29). Having phrased Auschwitz, what can European modernity phrase now? Nothing, obviously, and yet it cannot not phrase. This impossible necessity is what Lyotard calls the differend — what cannot be said, what cannot be shown, yet which is real and necessary to reality. Auschwitz, then, does not supply the only differend, differends abound, especially in what we call injustice, wrongs in the diction of The Differend. Injustice, because what cannot be spoken of is nevertheless spoken of, necessarily in a way that conceals, denying its reality. Anything we say about Auschwitz (or, say, Takbai), for example, denies it. But for Lyotard, all actions are phrases, every action is speaking (even non-human nature phrases: in perception, “an unknown addressor speaks matter” (Lyotard, 1988, p. 63). Thus, the Nuremberg war-crimes trials constitute a phrase following, commenting upon, the phrase that is Auschwitz. But in commenting upon it, the phrase of the trials conceals and denies the reality of Auschwitz (Lyotard, 1988, pp. 56-58): as though justice could be restored, as though the wounds could be healed, as though modernity could resume its forward march. Rather: the ideals of the Enlightenment, the metanarratives, expired in the gas chambers, fell to ashes in the crematoria. All that remains are the husks of those chambers swept clean and maintained at Auschwitz, now, as a memorial.

Auschwitz is not the only differend; I would say that it is emblematic, except that to say so threatens to conceal and deny the reality of other differends; one impossibility is not the same as other impossibilities. Lyotard’s, as it were canonical, definition of a differend is a conflict of genres (similar to language games) that must be resolved, but for which

5I place, “we,” in quotes not only to indicate that it is Lyotard’s conception of who we are, but also because I am not European but Thai, and can, therefore, only imaginatively place myself within the post-Enlightenment first person plural.

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there is no language capable of representing the reality and concerns of both. Any resolution, then, necessarily suppresses something of one, of the other, or of both (Lyotard, 1988, p. 9). In a capitalist economy, for example (Lyotard, 1988, pp. 11-12), labor is treated as a commodity, bought and sold like other commodities. But labor is human-reality: human effort in the irreplaceable time of human life, people in their actual lives; human-reality is not and cannot be a commodity. Now, in a capitalist democracy, labor disputes can only be adjudicated in terms of labor-as-commodity; thus, even when the workers win litigation (say, a demand for compensation for on-the-job injuries), injustice is done to them as human beings. As another example: the victims of the Nazi genocide cannot testify to their own murders, thus the genocide can be, and is, denied (Lyotard, 1988, pp. 3ff). What must be said cannot be said. Auschwitz is an example, but not just an example, it is rather the central differend for European modernity: What do “we” do now?

And in all this it seems clear to me that, as with games, in defining all of existence as phrases, Lyotard presents as forcefully and purely as possible what is not a phrase, or phraseable. “Purely” because to write the phrase, as I just did, “what is not a phrase”, is already to miss and miss-present the unphraseable. The human-reality of labor, or of death, cannot be said, yet is of the very foundation of our existence; yet is vulnerable. “Vengeance [as the unphraseable response to injustice] disavows the authority of any tribunal of phrases” (c.f. Lyotard, 1988, pp. 30-31). Reality entails, or is composed of, differends (Lyotard, 1988, pp. 55; Ross, 2002, p. 165).

Contra Habermas

Habermas' work is very much an attempt to answer questions similar to Lyotard's: How can we avoid totalitarianism in all its forms? How can we ensure that the horrors of the Nazi extermination campaign never recur? How can we recover the Enlightenment project of emancipation, recognizing, now, that there are features of that project that easily, if paradoxically, slip over into totalitarianism.

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6For example, I cannot buy back the hours of life that I have sold on the labor market.
(universality) and extermination (uniformity)? Writing after the reconstruction of Europe, when life and work had returned to normalcy, Habermas reinterpreted the paradox that the Enlightenment project of emancipation through reason led instead to dehumanizing domination, in terms of the “colonization” of the lifeworld by the system (Habermas, 1989, p. 355). That process turns human beings into units of production, but also leads to a crisis of legitimation, as the socialization processes in the lifeworld that legitimate the system are disrupted by the system (Habermas, 1989, pp. 151ff, 173). To put it crudely, men and women who have been reduced to cogs in the economic machine will not be successful in socializing children who are willing give their loyalty to that machine. His hope that the process of colonization could be countered by rationalizing and strengthening the lifeworld led, in part, to the development of Discourse Ethics.

And to Lyotard’s criticism: In What is Postmodernism? Lyotard notes (1984, p. 73-74) that Habermas hopes that it will be possible to “bridge the gap between cognitive, ethical, and political discourses, thus opening the way to a unity of experience.” He continues, “My question is to determine what sort of unity Habermas has in mind,” whether of an organic socio-cultural whole or some “passage between heterogeneous language games” that may or may not lead to synthesis. If an organic whole is what he means, then Lyotard believes that Habermas would be moving toward a Hegelian totalization, and possible totalitarianism. A “passage” between “games”, on the other hand, seems to assume the Enlightenment ideas of “a unitary end of history and of a subject,” ideas that have been seriously called into question. Lyotard says little more here, but it seems that he is reading too much into Habermas’ concern, or perhaps reading Habermas too little. Habermas, of course, is concerned with overcoming the radical differentiation of value spheres (Habermas, 1989, p. 355; Habermas, 1992, p. 162), or fragmentation of social functions, that has removed important life issues from the lifeworld of ordinary people, and given them to specialists. He calls neither for an organic socio-cultural whole (and consequent totalitarianism), nor for synthesis of diverse games (and a universal subject of history etc.), but for a reintegration of the life functions of ordinary people. Lyotard seems to think that the distinct spheres (he names cognitive, ethical, and political, while Habermas would say conative, ethical, and aesthetic) are simply
different language games that should not be mixed. But Habermas is not suggesting mixing them; in fact, he would not mix them (Habermas, 1989, p. 330). Rather, truth and justice are matters of real concern (not just games) to ordinary people that have, to some extent, been taken out of their hands, but in which they must have the opportunity to participate if they are to resist domination by the system (Habermas, 1989, p. 335,356). Surely, Lyotard would not maintain that one person can play only one game, that a mathematician, say, should not, as also a citizen, concern himself with issues of justice.

Lyotard extends his critique of the supposed pursuit of unity, to object to Habermas’ use of consensus to underwrite legitimacy, and to call into question the ability of discourse to generate a legitimating consensus. He writes of discourse as if it were “argumentation with a view only to consensus” (emphasis added; Lyotard, 1984b, p. 28), and points out that actual consensus is often irrational and counter to the interests of those who participate in it (Lyotard, 1984b, p. 60). Lyotard points out the importance of dissensus in the scientific pursuit of truth and the contingency of any discursively achieved consensus, “Consensus is a horizon that is never reached” (Lyotard, 1984b, p. 61). He demands too much of consensus, for example, that it define everything, then declares it impossible (Lyotard, 1988, p. 56). He demands too much of discourse, for example, that it regulates all of human society, then declares it inadequate (Lyotard, 1984b, p. 65).

To the extent that these criticisms are meant for Habermas, Lyotard misunderstands him. Discourse, of course, hopes for consensus but aims primarily at discovering what is true what is right, what is beautiful and so forth. If discourse had a view only to consensus then the participants would simply agree with whoever spoke first and have done with it. He is right that consensus indeed often irrational and counter to the interests of the participants. But that is why Habermas advocates discourse as a process through which rational consensus can be reached—and irrational consensus discarded: every participant has the right and duty to make proposals and to demand reasons for any proposed norm or truth, and to demand reasons for the reasons. Discourse, in other words, is constrained by certain rules of discourse.
Moreover in discourse ethics the universalization rule\(^7\) bars consensus on norms that are counter to the interests of anyone affected. But having said this much it is evident that the dissensus that Lyotard insists is so important in science is built into Habermas idea of discourse and that any achieved consensus, in Habermas conception, is subject to future challenge.

However, to leave it at that would be to misunderstand Lyotard. Lyotard mounts no point-by-point refutation of Habermas and it is not always clear that he means a critique of Habermas himself so much as an impressionistic caution against putting too much faith in consensus and discourse. More importantly, these cautions are embedded in (and perhaps not necessary to) Lyotard’s wider argument.

Lyotard opens that argument in *The Post Modern Condition* with an exploration of legitimacy. Legitimacy is not grounded in consensus, he writes, but is always and everywhere necessarily grounded in narratives (Lyotard, 1984b, p. 30). For traditional societies the narratives are the stories of origins and exploits of heroes, and society legitimates itself by making itself a part of those stories (Lyotard, 1988, pp. 152-156), “In a sense, the people are only that which actualizes the narratives” (Lyotard, 1984b, p. 23). For modern Western societies, the narratives are the metanarratives of the Enlightenment, that is, ideals: “the name of the hero is the people, the sign of legitimacy is the people’s consensus, and their mode of creating norms is deliberation” (Lyotard, 1984b, p. 30). Even in modern societies, however, he argues, narrative-as-story continues to legitimate activities on a small scale (see, for example, Lyotard, 1984b, pp. 27-29, 60). The small-scale narratives, or “mini-narratives”, that legitimate the actual life-conduct of men and women are subordinated to, and forced into conformity with, the metanarratives; in that sense, the metanarratives are unjust, inevitably generating differends. In the just (postmodern?) society, there would be no all embracing master narratives, whether metanarratives or otherwise, leaving the mininarratives to legitimate human activity in its multiple manifestations, without any one dominating any other (see, for example, Lyotard, 1984b, pp. 66; Lyotard, 1984a, p. 82)

\(^7\) All affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of everyone’s interests (and these consequences are preferred to those of known alternative possibilities for regulation) (Habermas, 1990, p. 65).
Consensus, on Lyotard's reading, would be universality, and the, by definition unjust, imposition of a single master narrative over the mininarratives: The "hero" of the modern narrative, the people, is "entirely different from what is implied by traditional narrative knowledge which requires [no] deliberation, no cumulative progression, no pretension to universality" (Lyotard, 1984b, p. 30). The modern metanarrative, with its pretensions to universality, lead, for example, to the destruction of the traditional knowledge of peoples (Lyotard, 1984b, p. 30). More fundamental yet, Lyotard holds that legitimacy through discursively achieved consensus is itself legitimated by modern narratives of legitimation (Lyotard, 1984b, pp. 31-32): what legitimates the consensus? Answer: the metanarratives of the Enlightenment, that, as narratives, are uncriticizable. That, in turn, suggests that the structure of discourse that, for Habermas, rationalizes consensus and prevents it from becoming repressive, is itself a kind of "meta-level" of consensus (Vogt, 2002, p. 114) that is imposed, with the attendant possibility of repressing other ways of life. That is to say, it is not only the content of the consensus that may be repressive, but also the process of deliberation itself. There are, then, three objections to Habermas to be addressed. First, that consensus is not legitimating; second, that consensus, even if discursively achieved, is repressive; and finally that the discursive process itself is repressive.

**Legitimation and Consensus**

I am prepared to concede, at least provisionally, that narrative is always and everywhere an ineradicable element of legitimation (Lyotard, 1984b, p. 30). Indeed that seems consistent with Habermas' point that the unarticulated and unquestioned background of the lifeworld is always present (Habermas, 1984, p. 335). Lyotard's insistence that the ideals of the Enlightenment are no more than new narratives (albeit "meta") strikes me as a rhetorical trick allowing

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6 The argument here, if we substitute "myth" for "narrative," closely parallels that of Horkheimer and Adorno in *Dialectic of Enlightenment*: Traditional myth/narratives (non-discursive, non-rational, non-criticizable) are overcome by Enlightenment rationality and the attendant ideals (universality, emancipation, progress). Those, however, turn out to be only a new myth/narrative complex, oppressive in new ways.
him to universalize (!) his analyses by way of narrative, but I will not argue the point here. Lyotard writes that the legitimating narratives of modernity involve either: the people as the subject of history marching toward emancipation, or: the people as the goal of history, to be formed by the work of the Spirit of Reason (Lyotard, 1984b, p. 33). We may grant that such narratives have legitimated science and the state, but we ask what Lyotard never asks: Legitimate for whom? He cites a number of instances. Science itself, he writes, is legitimated through the narratives of progress and emancipation according to which science emancipates man from superstition and shows the way to become human (Lyotard, 1984b, p. 28). The question “what proof is there that my proof is true?” is answered, or deflected, he claims, by reference to those narratives. But in the face of the failure of those narratives, science loses that legitimation. Now, “the only legitimation [for a change in science’s presuppositions] is that it will generate ideas” (Lyotard, 1984b, p. 65). Again: legitimate for whom? As if in answer, he writes “the conditions of truth—the rules of the game of science, are immanent in that game... there is no other proof that the rules are good than the consensus extended to them by the experts” (Lyotard, 1984b, p. 29). Lyotard seems inadvertently to have fallen back on the concept of consensus. But note that it is not a general consensus, but only of the experts. Still, one imagines that the process of reaching consensus would include discourse. Two observations: Lyotard seems close to conflating truth with legitimacy—and indeed he never actually defines legitimacy. Second, in treating science as a closed language game (see also Lyotard, 1984b, p. 46), Lyotard cannot account for the facts (indeed ignores them) that, for example, computers compute, airplanes fly, and that smallpox has been eradicated. He seems oblivious, moreover, to the fact that such actual contributions to human progress, however conceived, may contribute to the legitimation of science. Science is a game; but it is not wholly self-referential like chess or checkers. Rather its rules and its “moves” are a mode of engagement with what is not the game and those rules and moves are specifically intended to reveal patterns within what is not the game. In sum, science is a game only by an analogy, as a metaphor that Lyotard takes far too literally. (Or perhaps that is his implicit point: science engages something inexpressible that is not itself. The early pages of The Differend make it abundantly clear that self-enclosed language games lie.) I would
like to suggest here that other language games, and in particular the game (or genre or narrative) of the discursive search for universal norms, likewise engages what is not that game, in particular, human relations in general, and gains its legitimacy in part from how well that engagement functions.

But the question remains: legitimate for whom? The only possible answer is: for the people impacted. Thus to say that science is "legitimate" must mean, at least in part, that the population that pays for it and benefits or suffers from it accepts that it is important enough to support. That is to say: it is legitimated by consensus. I would add that legitimacy also requires that science is important enough to support. Part of that importance may be that science produces truths, and that depends on its relation to a world beyond the boundaries of its "game." Lyotard would retort that the legitimacy of truth and of the search for it depends on narrative. But that in turn would depend on consensus in accepting the narratives. At bottom, narrative may well guide consensus, but consensus at the same time empowers narrative: a narrative that is not told and accepted legitimates nothing. Thus, again, consensus is necessary, if not sufficient, to legitimacy.

Our concern in exploring Lyotard's critique of Habermas is with the legitimacy of norms, both moral (universal) and ethical (local). There can be no question that traditional, or pre-Enlightenment, norms were legitimated by narratives. These include both local narratives such as those discussed by Lyotard, that make no pretensions to universality and thus produce and legitimate norms only for the group that recounts them (Lyotard, 1984b, pp. 23, 27; Lyotard, 1988, p. 157), and master narratives such as those of Christianity that claim validity for all humanity, indeed all of existence, and in doing so imagine a single unified humanity. Lyotard would argue that what Habermas calls post-traditional norms are similarly legitimated by the narratives of the Enlightenment. But even granting that, the question remains: legitimate for whom? Legitimacy means, in part, acceptance by those affected, consensus. If we construct a concept of legitimacy disconnected from the idea of consensus, we end up with a "legitimacy" that has no force. In fact, legitimacy disconnected from consensus, would at best be what Habermas means by validity. A norm (say, slavery is wrong) could very well be valid but lack the force of legitimacy because there is no consensus on its validity. For Lyotard, legitimacy would seem to
mean: it is included in the narrative. If we asked “which narrative?” he would, I suspect, be forced to answer: “The one which is current for the group in question” thus implicitly invoking consensus. Indeed, Lyotard cannot consistently evade the centrality of consensus to legitimacy. He writes: “Consensus has become an outmoded and suspect value. But justice as a value is neither outmoded nor suspect. We must thus arrive at an idea and practice of justice that is not linked to that of consensus” (Lyotard, 1984b, p. 66).

“We must arrive at an idea and practice of justice…” In writing “we” Lyotard is calling for consensus on a new idea and practice of justice. But his most basic ideas assume already that consensus is integral to legitimacy. If the incredulity toward metanarratives de-legitimates those metanarratives, then credulity towards them, consensus, was part of their legitimacy and of their power to legitimate.

Consensus, Discourse, and Repression

For Lyotard, “the principle of consensus as a criterion of validation seems to be inadequate,” for two reasons (Lyotard, 1984b, p. 60). First, consensus understood as agreement among intelligent free agents is “based on the validity of the narrative of emancipation.” Second, public opinion, and hence consensus, can be engineered by the system, in which case the de facto legitimating force is power. The second “inadequacy” amounts to a terse restatement of Habermas’ thesis of the colonization of the lifeworld. There is no question that manipulated consensus can be repressive, but this is precisely what consensus achieved by discourse is meant to counteract. Only rational, discursively achieved, consensus counts as a criterion of validity; manipulated consensus does not. But manipulation is only an instance of a more general pattern. I suggested above that, adopting Lyotard’s terminology, narrative guides consensus but that at the same time the efficacy of narrative depends on consensus. This is a pragmatic-hermeneutic circle with the possibility of unjust narrative and non-rational consensus reinforcing each other, leading to injustice against those who are different and to our own embrace of injustice against ourselves. Habermasian discourse breaks out of the circle in that every statement (including narratives and prior consensus) become criticizable by anyone. It is not that there is a neutral position from
which to judge social practice, etc. (that could only be a universality of the sort feared by Lyotard), but that criticism from within initiates a search for justice in which all may participate. Achieved consensus on a norm constitutes a kind of universality, yet it always remains possible to criticize the norm, so that the universality is contingent. In Habermas, the immanent criticism of the early Critical School has become pragmatic and public.

But indeed, in writing that "We must thus arrive at an idea and practice of justice that is not linked to that of consensus", Lyotard is critiquing a non-Habermasian concept of consensus, and engaging in discourse towards rational consensus on a new idea of justice. That is, he is, in spite of himself, employing the Habermasian means of breaking the narrative-consensus circle.

The first inadequacy, that validation by rational consensus depends on the prior validity of Enlightenment narratives of emancipation bears discussion. First, if the principle of consensus as a criterion of validation" is "based on the validity of the narrative of emancipation" then the criterion must already be valid in order to validate its presuppositions. Habermas escapes this logical circularity inasmuch as he does not conceive consensus as a decisive criteria, but rather of open discourse as the search for validity; consensus that \( p \) does not strictly imply that \( p \), but rather that we agree to accept that \( p \) until \( p \) is called into question by good reasons. Second, is it the case that communicative reason depends on Enlightenment narratives? And second, even if it does, does that necessarily invalidate consensus as a criterion of validation? Habermas, of course, very much embraces the values of the Enlightenment, though in profoundly modified form, and it is true that the idea of legitimation by rational, that is discursively achieved, consensus (for example, that law is legitimate that is made by the people who must obey it), is based in Enlightenment ideals. But it is by no means clear that the concept of legitimation by rational consensus continues to depend on those values and ideals in their original form. On the contrary, consensus is, as I have shown, inseparable from legitimacy with or without those or any other ideals. Rational consensus is structured so as to prevent the domination of any set of ideals, values, etc. and that would include those of the Enlightenment. That consideration suggests that having roots in the Enlightenment cannot necessarily invalidate a practice. Rather Enlightenment, in Habermas'
reconstruction, is self-critical and hence overcomes itself, much as in Lyotard's first definition of postmodernism as tomorrow's modernism: modernism continually overcomes itself, or is postmodern before it is modern (Lyotard, 1984b, p. 79). Again, rational consensus is not imposed upon people, rather it is the agreement of those people on the validity of some statement and that agreement is always open to challenge. That alone would seem to answer the charge that consensus is repressive, since it seems nonsensical to say that the people repress themselves.

For Lyotard, such answers only betray fealty to Enlightenment narratives (Lyotard, 1984b, p. 35). However, his repeated suggestion that rational consensus is to be rejected because it is based in Enlightenment narratives reads as though the Enlightenment had taken on the narrative role of Satan, such that whatever is of the Enlightenment is for that reason evil. Let us, for a moment, accept Lyotard's premises: Every legitimation depends ultimately on narrative; New narratives then come into being as the old ones become incredible; The (meta)narratives of the Enlightenment have been discredited. I see no objection in all this, either rational or narrative, to encouraging rational discourse as a means of seeking consensual legitimation of norms. What Lyotard would have to do is to show how rational discourse leading to consensus of itself is unjust. I address that possibility below.

Another line of argument is that genuine universal consensus is impossible, and that any apparent consensus is therefore illusory and imposed unjustly on those who are different. Habermas as we have seen is aware of this danger (Habermas, 1984, p. 15), and that is part of the reason that he has been writing more recently about ethical in addition to moral discourse. Moral discourse seeks to identify valid universal norms and to legitimize them with the help of consensus. But such norms are few and highly abstract, leaving broad range for local interpretation and implementation. Ethical discourse seeks to identify local norms, applicable to a restricted group, with no need for consistency with other groups. Thus in Habermas' vision there is ample provision for "mininarratives" with only the proviso that they must not violate the interests of any others (that is, must not violate universal norms).

Room for injustice nevertheless remains, first, in the restricted
area in which ethical/local norms must conform to universal/moral norms. A deeper concern is the possibility that rational discourse leading to consensus is itself unjust. Vogt (2002, p. 114) suggests that the discursive process constitutes a kind of "meta-level" of consensus that is imposed, with the attendant possibility of injustice to other ways of life. These are discussed below.

Lyotard is Habermas

Many of Lyotard's objections to Habermas' program dissolve when Habermas is better understood. In a number of statements, Lyotard even sounds like he is advocating Habermas' analyses, and I have indicated some of these in passing. There are others. For example, he writes in The Post Modern Condition (Lyotard, 1984b, pp. 46-47) that with the technological value of "performativity", that is efficiency, and the ascendancy of capitalist economic power, both science and law have come to be legitimated on the basis of efficiency. Even the university, previously legitimated by the emancipation narrative, he complains, has come to be legitimated by performativity, charged to produce "so many doctors, so many teachers... engineers... administrators, etc." (Lyotard, 1984b, p. 48), thus subordinating the university to existing powers (Lyotard, 1984b, p. 50). In addition to what seems a nostalgia for the "emancipation narrative" Lyotard is here describing impressionistically what Habermas calls the mediatization and strengthening of the systems of economy and power and their incursion into, or absorption of, the realms of law, science, and the university. Lyotard writes, citing Luhman, that "decisions [of the system] do not have to respect individuals' aspirations: the aspirations have to aspire to the decisions, or at least to their effects" (Lyotard, 1984b, p. 62). That, of course, is a restatement of the ideology problematic, but put with the preceding, Lyotard's analysis of performativity displacing narrative seems a repetition of Habermas' thesis of the system's colonization of the lifeworld. Finally, Lyotard writes:

Most people have lost the nostalgia for the lost narrative. It in no way follows that they are reduced to barbarity. What saves them from it is their knowledge that legitimation can only spring from their own linguistic
practice and communicational interaction. (Lytard, 1984b, p. 41)

That is, discourse has the potential of replacing the lost non-reflective, non-criticizable legitimating narrative. Or, since, as I have shown, legitimation is inseparable from consensus, Lytard is here arguing that discursively achieved consensus has the potential of replacing consensus that is dictated or manipulated by narrative in a way that supports justice, or, at least, non-barbarity. Indeed, the passage reads like a paraphrase of Habermas in *The Theory of Communicative Action* (Habermas, 1989, p. 82).

Vogt, however, cautions against “toning down the differend between Habermas and Lytard” (Vogt, 2002, p. 120). Our effort so far has perhaps only cleared the air of some misunderstandings, thus allowing us to see real differences.

**Habermas is not Lytard**

Vogt feels that communicative ethics includes an assumption of an “unproblematic continuation of business as usual” and is incapable of recognizing differends, incapable of recognizing that business as usual was “vaporized in the Nazi crematoria” (Vogt, 2002, p. 123). He chides Manfred Frank in his defense of Habermas *vis-à-vis* Lytard for reducing differends to dissensus; that is, to differences that *can be* formulated and discussed in the same terms (Vogt, 2002, p. 114). In doing so, Frank dissolves the very concept of differend. To ask whether or not Habermasian communicative ethics is capable of recognizing differends (and whether there are such things as differends), is to address the residual issues alluded to above. First, does the demand that ethical (local) norms not violate moral (universal) norms entail a violation of the local? Second, is the discursive process itself only a particular culture-bound game that thereby excludes non-Western/modern groups? If so, then to the extent that discourse is given the task of legitimating universal norms it would seem to commit injustices against those groups. Similarly, are there conflicts of difference even within cultures that cannot be expressed and mediated in a single genre/language game? If so, then discourse aimed at resolving those conflicts would do injustice to one or more faction.
The first question is interesting in that it leads us directly to the paradox that Lyotard encountered in *Just Gaming*. Universal norms are those that protect the interests of all, both individually and collectively, and typically take the form of rights. Universal norms, then, mirror Lyotard’s prescriptive that no language game interferes with the conduct of any other language game. The paradox for Lyotard is that such a prescriptive is an interference of the very sort that the prescriptive forbids, and thus, at least in the abstract, an injustice, a differend. Is it in fact the case that the rule not to interfere (to protect the interests of all) is sometimes an interference (counter to the interests of some)? Unhappily for Habermas, it is easy to imagine such cases. It is in the interests of the United States to interfere in the internal affairs of other countries, for example, to anticipate and prevent terrorist attacks against itself. To forbid such interference would interfere with the United States and thus violate the non-interference rule. Evangelical Christians believe that it is both in their interests and in the interests of others, as well as a religious duty, to use every possible means to convert those others to Christianity, even when those others have similar beliefs about another religion. A non-interference rule forbidding Christians to attempt to convert others would interfere with the practice of their religion. But the key to calling these situations differends is that there is no common language in which the differences can be discussed and resolved. An Evangelical Christian, for example, is not permitted by his religion or his personal identity to come to agreement with a Muslim to “live and let live.” Those with a modern secular perspective simply cannot comprehend the theological politics of much of the non-Western world, for example, of Iran (Lilla, 2007). There remain, then, differends, non-negotiable differences that apparently cannot be discursively resolved without injustice.

Is the discursive approach to consensus as imagined by Habermas a culture-bound practice that by its very structure excludes much of humanity no matter how open it is to participation? I suspect that Habermas rules of discourse, open and equal participation by every competent speaker, may well not be the universal presuppositions of human speech. Nevertheless, argumentation in accord with those rules is probably among the linguistic competencies of nearly everyone everywhere. Thus widespread moral and ethical discourse should be possible. Is there a differend here? I suspect that there is. Again, for
fundamentalist Christians and Muslims to submit questions of faith, including conflicting claims to universality for norms, to the type of discourse that Habermas envisions would be for each to betray their faith. The failure of the United States to institute participatory democracy in Iraq may be due to an incompatibility of Iraqi culture (or of its several cultures) with modern discursive decision-making practices. Habermas himself seems tacitly to acknowledge the differend here in writing that the success of communicative rationality to resolve broad areas of social conflict requires a culture that meets it "halfway" (Habermas, 1990, p. 207).

And finally, can there be differences within the same culture such that conflicts cannot be mediated discursively without injustice? The Differend endeavors to show that there are. The example mentioned above of labor as a differend between the human-reality of the workers and the performativity demands of the economic machine is, to my mind, sufficiently convincing that such differends exist.

Generally, we may say, summarizing the arguments of The Postmodern Condition and What is Postmodernism, that any assumption that every difference can be mediated through discourse (that every reality is expressible) automatically denies the reality of differences that cannot be so mediated (realities that cannot be expressed). That denial then justifies elimination of differences, and of those who are different, by the state (the school, the corporation etc.) by making the elimination invisible (for example: the people in the South of Thailand have no legitimate grievances, therefore there are no insurrectionists, only common criminals).

Lyotard's Program

I acknowledge then that differends are real and that Habermasian discourse would appear to be unable to resolve them. In one sense, this is hardly a criticism, however, since the very meaning of differend includes unresolvability. What, then, is Lyotard's program for coping with differends?

Such as I can reconstruct a program, it involves the rejection of the very idea of norms. Justice cannot be reduced to norms Vogt, speaking for Lyotard, insists (Vogt, 2002, p. 119), rather we must judge without criteria (Lyotard, & Thébaud, 1985, pp. 14-18). Roger Foster (1999,
p. 93) puts it: “Justice necessarily lacks a language of its own.” In other words, in each situation we must act justly, without being able to define justice. This is partly because each situation is unique and prior norms/criteria cannot be adequate to any specific situation: the universal is inadequate to the particular. But the objection to norms goes deeper in a way that is reminiscent of Levinas, who Lyotard cites approvingly (Lyotard, 1988, pp. 110-116). For Levinas, the human other by his very presence makes a fundamental, inexplicable demand upon me—for unconditional support, acceptance, defense. In the presence of any human other, I am inexplicably but fundamentally and ineradicably responsible for his existence. For Lyotard (Lyotard, 1988, pp. 107-127), then, to act in conformity to criteria or norms is to fail to respond to the demand of the presence of the other. It is not only that norms are not adequate to the situation: even if they were adequate, norms permit me to act mechanically, the way a computer executes program instructions (my metaphor), without ever engaging the actual situation, without “being there” as it were: norms are alienating, they evade the “anxiety, namely the nothingness of a ‘what-is-to-be-linked’” (Lyotard, 1988, p. 143). We may put it this way: because each situation (potentially) includes differends, responding according to norms (potentially) commits injustice; one must therefore act according to the, as yet undefined, justice of the situation, potentially in radically new ways that may violate established norms. We must be free, Lyotard writes, to create new genres for linking onto phrases where existing genres entail differends (Lyotard, 1988, p. 13). To construct an example: if a soldier is ordered by his officer to fire on fleeing, unarmed boys, the norms that rule his life tell him to open fire; the only possible just action, however, may be to refuse. I want to emphasize that I do not mean that the soldier is faced with multiple conflicting norms. Rather, I am imagining a situation in which the immediate situation places an immediate human demand that conflicts with accepted norms. The norm says, “fire!” the terrified back of the running boy commands “hold fire!” Or if you prefer: the soldier is faced with the norm to follow orders and the norm not to kill; He has no criteria (meta-norm?) to decide between them, and no leisure for discourse. Or even to think it through. He must shoot or not shoot. Now.

*On this subject see also Foster, “Strategies of Justice”.*
I readily concede to Lyotard that in many situations there are unique factors that require judgment for which there are no existing criteria, and that living only by norms would alienate the actor from actual situations. But taken as a demand to eliminate norms and criteria, Lyotard’s position is untenable on the face of it. To imagine actors acting without criteria is as absurd as to imagine speakers speaking without grammar. Grammar is employed in the generation of meaning, and in the creative generation of new meaning. The same is true of criteria and norms; they are necessary to meaningful action and to creative action. As Paul Fairfield puts it,

The political actor is never without criteria. We are always already oriented as political agents by the traditions and forms of life to which we belong... our orientation toward practical situations is informed by the training and education we receive as members of an historical and political community. (Fairfield, 1994, p. 72)

But also, “Appropriate forms of action involve appropriating, applying, extending and transforming our historical traditions in a creative and prudent manner” (Fairfield, 1994, p. 72). In other words, criteria and norms orient us toward situations in which we may have sometimes to make unanticipated decisions for which there are no criteria—criteria and norms are necessary but ultimately inadequate. But such judgment without criteria contributes to the creation of new criteria. Granted, that in a special sense doing justice to the reality of the event requires breaking through the schema of criteria and norms, the criteria and norms are nevertheless the inevitable means by which we engage the event. It may well be the case that fundamental norms like “tell the truth!” address us immediately in the presence of a human other, as obligations and independently of any deliberation, independently, even, of socialization, but how I enact (or refuse) that obligation will depend on the behavioral “grammar” of my culture. Too, what objection could there be to putting such obligations as frequently arise into words and to socializing children in honesty, compassion, and the like? And discourse over which felt obligations should be canonized as norms is not only unobjectionable, but should be encouraged as a corrective to possible abuse of an ethic of immediate
feeling, for example to prevent a paranoid legislator from enforcing what he feels as obligations. Moreover, refusing either to form or to follow criteria, how could we learn from our mistakes?

Because it is obvious, I have neglected to mention that Lyotard's program would "obviously" include "a renunciation of terror" (Lyotard, 1984b, p. 66). Perhaps, also because it is obvious, Lyotard neglects to notice that he thus proposes as a universal norm the renunciation of terror.

**Request for Clarification**

I should like to address a few clarifying questions to Lyotard concerning his program.

Would you, Achan Jean-Francois, have had France hold on to its colonies, say Algeria and Vietnam, as a result of refusing to form norms that would prefer liberating them? Would you have the United States continue invading other countries (Iraq) for failing to put its experience (Vietnam) into the form of norms? Would you doom Thailand suffering major political crises every ten years or so for the lack of consensus on democratic norms?

Might not insisting on judging without norms and without correction from others lead to subjectivism and totalitarianism? I can easily imagine that judging without criteria and without correction may have led the young Pol Pot to become the monster that he did, all the while believing his judgments to be just. It is necessary, then, to allow for correction from others, but wouldn't such corrections amount to criteria, norms? Indeed might not correction from others take the form of discourse ethics? For example, suppose that one steals a memory stick, judging without criteria that his need outweighs the profits of the corporation. His friend says, "Why did you do that?" etc.

We may agree that the Nuremberg trials as the phrase linked to the Nazi genocide were an injustice in that they pretended to a justice that could not be done. But would you prefer that the trials had not taken place? And the likelihood that genocide would have come to be seen as part of the normal (and thus tolerable) course of war?

With your rejection of Enlightenment narratives, do you then oppose emancipation, equality and the rest? Are you then eager to accept domination of one group by another or of all by one? You answer,
I imagine, that what you advocate is beyond the metanarratives: they posit an emancipation and equality that is totalitarian because the same for all. You advocate, rather the mininarrative, an emancipation that is the absolute independence of each (but: each what?) from the others. Overlooking what you already know, that the rule of independence violates the independence of all, I should like to imagine a situation. An ethnic Thai and an ethnic Chinese, both Thai citizens, fall in love and wish to marry. The customs (genre, mininarratives) of one dictate that the couple will live with the girl's family, the customs of the other, with the boy's. Would you, then, forbid their relationship because it entails a mixing, an interference, a conflict of mininarratives? Would you not really permit a Habermasian type of discourse to come to some consensus between the two families and the couple as to where they will live?

Lyotard is Lyotard

But to take Lyotard so literally is, I suggest, to miss his point. He is not so unimaginative as to fail to anticipate such problems. Rather he wants to say: something is inevitably broken here. Whether or not there is resolution something is necessarily broken. He would insist on recognizing the anguish, the loss, of that brokenness, but also, and more, that the reality of the situation is in the brokenness (the reality of Auschwitz, of Takbai, is shown in the impossibility of expression, the brokenness of the phrasing. See Lyotard, 1988, pp. 57-58).

Lyotard's question, again, is: How do we proceed after Auschwitz? His concern, on my reading, is not to answer that question but adequately to ask it, to do justice, as it were, to the fact that justice cannot be done and to "bear witness" (Lyotard, 1988, p. 13) to the multiple injustices that are attendant upon modernity, but that modernity because of its pretensions of universality, humanity etc. cannot acknowledge or even see. He points out the inadequacies in Habermas' program not in order to propose a better way, and not as an argument that discourse and rational consensus should be banished from the political landscape. He does mean to point out the dangers of a universalistic ethic—but more than that, he means to insist upon the realities that are not and cannot be addressed in any program. He has no program, in other words, except the continual search for new genres, to be always, always
prepared to go beyond the strictures of *every* program, beyond the rules of *every* game. The ethical for him, as for Levinas, according to Aylesworth (2002, p. 93), does not affect us as “the moral law, which would be a unifying rule for the disposition to act but as an openness to alterity and to responsibility toward the other” (Aylesworth, 2002, p. 93). In each event, one decides anew, and justice is never accomplished, but can only be repeatedly recreated (Aylesworth, 2002, p. 94). The soldier, regardless of the norms, no matter how discursively formed, of obedience or of national security or... must refuse the order to murder this fleeing boy whose human-reality is denied by the labels: “criminal,” “insurgent,” “separatist.” (But this little story about the soldier, the order, and the boy must be read only as a story, not as a rule to be obediently followed, not as a narrative grounding a norm).

*Lyotard and Habermas*

Again, as an ethical theory, Lyotard’s position is untenable. Aylesworth writes that it is “hardly applicable when we are called upon to make moral judgments in specific cases” (Aylesworth, 2002, p. 98). I should like to point out another set of problems, that of public policy, law, jurisprudence etc. Policy makers and legislators are not in the events for which they are making decisions; indeed, they can only anticipate what kinds of situations may occur based on past experience. Even judges are not involved the events about which they judge. For legislators to legislate and judges to judge without criteria but rather based only on their feelings of the moment would clearly be disastrous. Indeed, without criteria and norms of governance, the university in which Lyotard worked and wrote would be impossible. The criteria by which we judge, moreover, are not permanently fixed, as Lyotard seems to fear. In Paul Fairfield’s words, criteria in actual public life “are contested”

not only with respect to their meaning but also with respect to their relative priority within a broader fabric of political concerns. Whether we choose, for instance, to award a higher priority to individual liberty or to the common welfare, to equality of opportunity or of economic condition, will have far-reaching policy implications. (Fairfield, 1994, p. 73)
Habermas' theory is specifically concerned with these issues and with the procedure for identifying and legitimating norms for regulating public life.

But as Aylesworth also writes, “Mere procedure (contra Habermas) is not enough: the right word occurs as a free intuition” (Aylesworth, 2002, p.91). I do not understand Habermas as claiming that procedure alone is enough although he hardly writes about anything else. What is missing in Habermas is a satisfactory discussion as to what kinds of reasons might be brought to moral and ethical discourse. His universalization principle, (U), really only provides a rule of inference without real moral content except the negative requirement that “interests” not be violated. On a deeper level Habermas provides no account of fundamental moral intuitions or to questions such as why, fundamentally, we should be moral. Those omissions are to be expected in a rigorously formal theory. Such writers as Lyotard and, for example, Levinas, attempt to fill this gap by identifying the immediate human experience of ethical choice. Since that experience cannot be discursively explained or justified, Lyotard’s work comes across rather as moral demand and challenge, than as workable theory.

These considerations suggest that while serious disagreement remains between the two, those disagreements do not amount to a “differend” as Vogt believes. Their work is rather complementary, each filling in what the other lacks. Lyotard is concerned with how we, as persons, respond in each unrepeatable moment, each unique situation; Habermas is concerned with how we regulate our ongoing life together. For example, Lyotard would insist that the soldier under orders to kill must break through received norms in responding to the order and to the person (victim? criminal? insurgent? boy?) in front of him. Habermas is concerned to implement norms such that soldiers would not be ordered to commit murder.

Lyotard (through Vogt) is quite right that justice cannot be reduced to norms. But he is wrong if he really insists that we should, or even could, live without norms. He is quite right to caution that making consensus alone the basis of legitimacy can justify oppression. He is wrong if he seriously rejects the fact that discursively achieved and always-criticizable rational consensus, as Habermas conceives it, is not only compatible with, but also necessary to, a just social order.
Discursive Exclusion

There remains the problem that the process of discourse may, first, exclude certain regions of human-reality and second, that it may exclude, by incompatibility, some non-Western cultures. Vogt expresses the problem as "discursive ethics' metalinguistic pretension to the domination and mastery of other language games" (Vogt, 2002, p. 120).

But this is the reality: the multiplicity of language games inevitably intrude upon each other and some sort of discussion necessarily ensues—even if the phrases of the discussion take the form of bullets. It is not a question of whether there will be a discussion, but of what sort of discussion will ensue, and whether or not discourse is a preferable option. Granted that human-reality is often in fact excluded in specific discourses, for example in labor negotiations: Is such exclusion necessary to discourse as such, or is it possible for the process of discourse to modify itself into (borrowing Lyotard's terminology) new genres capable of including formerly incompatible phrases in dispute? Habermas specifies that, in the ideal discourse, all affected are free to express any and all relevant concerns, but that all must be prepared to give reasons for their statements and only the force of the best argument may prevail. Does this provide sufficient flexibility in the restricted area of our interest, the search for valid norms? I cannot attempt here a decisive answer, but surely much depends on what sorts of contributions to the discourse count as "reasons" and since the rule of inference, (U), turns on interests, what counts as "interests." My impression is that Habermas would rather narrowly restrict these, and indeed he has been slow to acknowledge that interests are largely culturally determined and that (U) thus brings local ethical concerns into the search for universal norms (see Warnke, 1995; Finke, 2000). I believe, however, that the discursive arena can be loosened sufficiently to reduce intractable differends to a minimum.

The cross-cultural question is more difficult. Many non-Western societies are clearly not structured along discursive lines. Even in a nation as modernized as Thailand the idea of discursively achieved norms seems foreign, and perhaps even sacrilegious to the vast majority who look to the narratives of Buddhism or of Islam to validate the norms to which they grant consensus. Yet, saying so forces upon
us the necessity of mediating these two narratives. Where the norms of Islam conflict with the norms of Buddhism, how are we as a nation to choose the norms by which public life is to be regulated? The only alternative to domination and force would seem to be discourse aimed at formulating principles acceptable to both. I submit that the potential differend entailed by adopting discursive practices at odds with our hierarchical customs, would be preferable to the terroristic imposition of the one upon the other. Such discourse would require a broadening of what counts as reasons and interests to include religious beliefs.

To make discourse ethics an effective approach to the search for universal, that is, globally legitimated, norms, then, I would expand the range of permissible interests and reasons to include those that are religious, cultural, local-narrative, etc. Habermas has already gone some distance in this direction in recent writings, in allowing that religion remains and is a growing force in public life. Still, he holds that religionists must ultimately learn to translate their religious concerns into secular terms in order to enter into public discourse (Holberg Lecture, Habermas, 2005). I would not make that requirement. That God forbids homosexuality can be accepted as a reason by non-theists inasmuch as they understand that it is in the Muslim's and Christian's interest to follow the dictates of their religion. Others, may well have what they feel are better reasons for not forbidding homosexuality, with the result that there will be no universal rational consensus and hence no universal norm on the issue, while each community is free to keep its own local norms. While Evangelical Christians would not consent to a norm banning efforts at conversion, they might assent to norms limiting the means.\textsuperscript{10} Since different communities will have different, often incompatible reasons for supporting the same norms, I would accept Rawls idea of overlapping consensus, historically rejected as genuine consensus by Habermas. Farid Abdel-Nour (2004) has argued that Habermas has tacitly dropped his rejection of overlapping consensus. By opening up the field of reasons and interests, moral-ethical discourse would be expected sometimes to move into meta-discourse on what constitutes reasons and interests in the particular

\textsuperscript{10}The issue of whether and how to include religious statements in public discourse is far more complex than I can indicate here. Habermas' "Religion in the Public Sphere" (2005) includes an excellent review of the discussion.
context. Here discussions of what fundamentally constitutes morality, including the contributions of such thinkers as Lyotard and Levinas would become directly relevant. For example, reasons in a discourse on the death penalty could include the human situation of executioner and condemned and whether executions put the entire society into the position of executioner. In other words, discourse is the arena in which Lyotard could (and already does) bring his ethical concerns—along with those of widely different persuasions. At the same time Lyotard—along with others of different persuasions—could (and do) breathe the life of real ethical experience into the formal procedure that feels rather cold and sterile in Habermas’ writings.

Such relaxations of rationality and of admissible interests would be expected to enhance the possibility of cross-cultural discourse. Yet it is evident to me that there are sometimes such vast differences that the rationality and interests of one culture simply cannot be expressed in the terms of the other. In such cases genuine discourse in specific areas cannot occur. The problem is not only in the incompatible content of specific beliefs, but rather in the incommensurability of lifeworlds, of the general background of implicit assumptions, expectations, action patterns etc. that are taken for granted and most of which are rarely or never thematized and discussed. Much of what is conflictual, then, cannot become the topic of discourse without first being made explicit; but making some things explicit may fundamentally change them. Yet, like Lyotard’s phrases that cannot not link, diverse cultures and lifeworlds are in contact with one another, and cannot not interact. Habermas does not seem to notice the depth of difference between cultures. Lyotard notices, of course, but oddly seems to imagine that cultures and lifeworlds are rigid, static, and self-contained to the extent that the differends between them are forever ineradicable (Aylesworth, 2002, pp. 98-99). I would like to suggest, though I cannot explore the issue in any further depth, that imperfect discourse, though initially shot through with misunderstandings may, relaxed in the ways suggested above, lead in time to a mutual accommodation of lifeworlds sufficient to allow the emergence of genuine discourse and
the common search for shared norms. I want to emphasize that I am not imagining here a recovery of the Enlightenment ideal of a single humanity, but rather a means of mediating conflict and of managing from within the incessant, inevitable, and not necessarily undesirable intrusion of different lifeworlds upon one another.

Vogt makes much of the fact that Jews were denied a voice in the German discourse leading up to Auschwitz. He would seem therefore to prefer shutting down discourse as even an option, than to allowing for even the possibility of Habermas' program of opening discourse up to all. But that leads me to finally address what Lyotard (Lyotard, 1988, pp. 1-14) and others (for example, Vogt 115-117) seem to feel as their decisive criticism of discourse ethics. The victims of Nazi genocide are dead. They cannot, therefore, enter into discourse no matter how constituted. Discourse, therefore, cannot restore justice. That is true, of course, but that is to demand far too much of discourse ethics. The purpose of discourse ethics is not to restore justice, nor does Habermas or any advocate of discourse ethics to my knowledge expect it to do so. Rather the purpose of discourse ethics is to come to agreement on norms that will minimize injustice in the future.

Lyotard's protests against consensus and discourse represent protests against the great historical injustices of the twentieth century. The justice and necessity of the protest, however, must not deter us from seeking means of avoiding repetitions of such injustices in the twenty-first.

\[11\] See Chambers, 1995, "Discourse and Democratic Practices," on the role of partial consensus and imperfect discourse in leading to the possibility of genuine discourse and consensus.
References


