Lyotard, *The Differend*, and the Philosophy of Deep Disagreement

James Cartlidge

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Abstract: *This paper examines the philosophy of Jean-Francois Lyotard in relation to the analytic philosophy of deep disagreement. It argues not just that his work has relevance for this debate, but that it offers a challenge to the 'epistemic paradigm' present in its academic literature, represented by the two most prominent sets of theories within it – the 'fundamental epistemic principle' and 'hinge epistemology' views, arguably most strongly represented by Michael Lynch and Duncan Pritchard, respectively. Focussing on Lyotard's text 'The Differend', I show how its conceptual framework and philosophy of language locates the cause of deep disagreement not in the epistemic realm, but in things which do not fully submit to epistemic evaluation: the radically incomplete and open nature of language, and our increasingly politically pluralistic world full of incommensurable differences that do not always admit of rational resolution. Lyotard's work calls for us to conceptualize deep disagreements as problems of politics, not epistemology, and to find new ways of dealing with disagreements that do not force a solution on them (which often comes at the cost of one party being wronged, or worse) and to create new ways of speaking so that our collective conceptual resources can be increased to better deal with specific cases of dispute. Lyotard's relevance for the philosophy of deep disagreement is also further discussed with references to Miranda Fricker's work on 'epistemic injustice', which Lyotard, in a different vocabulary, is also concerned with and analyses in 'The Differend'.*

In 1985, Robert Fogelin outlined a conception of 'deep disagreement' that many analytic philosophers have since taken as their starting point to attack or defend. In a 'normal' disagreement, productive argument is still possible because the conditions required for argument still exist – I disagree with you, but we can argue meaningfully about it. Deep disagreements, however,

1) Cannot be resolved through the use of argument, for they undercut the conditions essential to arguing.
2) Are immune to appeals to facts.
3) Are generated by conflicts between 'framework propositions'.[1]

[1] Fogelin, Robert J. 'The Logic of Deep Disagreements' *Informal Logic*. Vol. 25 no. 1. 2005. p. 3-11. p. 8. (First published in *Informal Logic*. Vol. 7 no. 1. 1985. p. 1-8.)

As Fogelin argues, "the possibility of a genuine argumentative exchange, depends […] on the fact that together we accept many things", that there is "a shared background of beliefs and preferences" (Fogelin 2005, 6, 7) we can appeal to either for the resolution of a dispute, or a mutually acceptable conclusion. (Which might not always be the same thing – we can 'agree to disagree'.) Without this shared background, argument becomes impossible, the disagreement becomes deep. As Turner/Wright note, Fogelin makes two claims about this: firstly, the "relatively modest claim that some disputes cannot be resolved through argument" and secondly, the "more radical claim that such disputes are *beyond rational resolution*."[2] Fogelin's paper has been very influential in the ever-growing analytic literature on deep disagreement, which explores the various problems that arise around this important topic. As Lavorerio puts it, "two of the most pressing issues a theory of deep disagreement must address [are] their source and resolution", but the topic has wide-reaching philosophical and political implications, being especially consequential for discussions of "the limits of argumentation, the nature of rational persuasion, [and] the plausibility of epistemic relativism".[3]

Such issues are also at stake in the work of Jean-Francois Lyotard, especially *The Differend*, originally published two years before Fogelin's paper and driven by the same questions and concerns as the analytic philosophy of deep disagreement. The book begins by defining a differend as "a case of conflict […] that cannot be equitably resolved for lack of a rule of judgement applicable to both arguments"[4] that both sides would accept as fair - a type of deep

[2] Turner, D. and Wright, L. '*Revisiting Deep Disagreement*'. *Informal Logic* vol. 25, no. 1, 2005, p. 25-35. p. 25. Emphasis added.

[3] Lavorerio, V. '*The Fundamental Model of Deep Disagreement*.' *Metaphilosophy*. 53 (3-4). July 2021. pp. 416-431 p. 1, 4. https://doi.org/10.1111/meta.12500

[4] Lyotard, J-F. trans. George van den Abbeele. *The Differend: Phrases in Dispute*. Manchester University Press. Manchester.1988. p. xi

disagreement. Settling a differend in favour of one side would wrong the other one, since one case will have been suppressed in favour of the others', and they will not feel they have been judged fairly. Differends are problems of justice and politics, and part of the aim of Lyotard's text is to address their source and resolution. Lyotard investigates several such cases by using powerful, politically significant examples, referencing philosophers from the ancient Greeks to Wittgenstein, and developing a theoretical framework for analysing cases of disagreement. Such a text is clearly relevant for the analytic philosophy of deep disagreement and deserves to be discussed within it.

The relevance of Lyotard's work in *The Differend* for the philosophy of deep disagreement can be made even clearer by considering the recent work on the different types of 'epistemic injustice', theorized by Miranda Fricker "as consisting, most fundamentally, in a wrong done to someone specifically in their capacity as a knower".[5] This phenomenon has been rightly noticed as relevant to discussions of deep disagreement (for instance by Lagewaard[6]), and without calling them epistemic injustices, Lyotard also addresses such wrongs in *The Differend*: how they work, why they happen, and what can be done about them. Fricker speaks of certain types of epistemic justice as resulting from "gap[s] in our collective resources [which can put] someone at an unfair disadvantage when it comes to making sense of their social experiences", citing an example of someone who "suffer[s] sexual harassment in a culture that still lacks that critical concept." (Fricker 2007, 1) These kinds of gaps mean that wrongs can be committed because the concepts necessary for the expression and adjudication of certain forms of suffering are lacking: an especially prescient concern when deep disagreements arise

[5] Fricker, M. *Power and the Ethics of Knowing*. Oxford University Press. Oxford. 2007. p. 1
[6] Lagewaard, T. J. '*Epistemic Injustice and Deepened Disagreement*'. *Philosophical Studies*. 178. 2021. pp. 1571-1592.

about them. Lyotard's work is an attempt "to bear witness to differends" (Lyotard 1988, 13): the problematic gaps in our collective resources, the disputes and injustices they make possible, and the radical, permanent instability and lack in our language which means these will always be problems that must be addressed in our politics.

I do not want only to claim that Lyotard's work is relevant for the philosophy of deep disagreement because it pursues similar concerns – although this is true. I contend that Lyotard offers us a powerful alternative to the current paradigm of the analytic literature on deep disagreement, which tends to conceive of deep disagreements as epistemic problems, with epistemic sources and epistemic resolutions. To illustrate this, I will outline the two most salient families of analytic responses to the problem of deep disagreement: the 'fundamental epistemic principle' and 'hinge epistemology' views. These views locate the source of deep disagreements in clashes either over epistemic principles or a-rational 'hinge commitments' which act as the 'scaffolding' to our epistemic systems. Both advocate a kind of 'side-on' approach to resolving deep disagreements which appeals to the common epistemic ground (beliefs, thoughts, patterns of reasoning, etc.) between the participants that might ameliorate their disagreement, allowing them to understand each other better and perhaps even resolve the dispute. In both cases, deep disagreements are construed epistemically, both in terms of source and resolution. People disagree deeply either over their epistemic principles, or the hinge commitments that hold their epistemic systems together and, in both families of views, resolving disagreements involves appealing to common epistemic ground to better facilitate communication.

While the epistemic aspects of deep disagreements are surely important, if we appreciate the full implications of Lyotard's work in *The Differend*, we can see that they do not really explain the 'deepness' of deep disagreements, or why deep disagreements exist in the first place. On my interpretation, one sense in which Lyotard uses 'differend' is interchangeable with 'deep disagreement' – cases of dispute so profound they persistently resist rational resolution because the conditions for productive argument are undercut.[7] But there are deeper meanings in play for Lyotard. The differend comes to stand for the radical gap in our collective linguistic resources, the open and incomplete nature of our language, which means there is always more to be said than we are currently capable of saying. So, there will always be deep disagreements purely because we will always lack the conceptual and linguistic resources for understanding and communicating certain things. The real root cause of deep disagreements, the reason they exist and why they are so deep is not found in the epistemic, but in the incompleteness inherent to human language, and the radical complexity and plurality of human culture. This gap is not amenable to epistemic evaluation in the context of deep disagreement since it cannot be represented adequately in language. It is felt, experienced by the participants of dispute when communication breaks down. Hence, 'the differend' refers not just to specific cases of deep disagreement, but to

> the unstable state and instant of language wherein something which must be able to be put into phrases cannot yet be. […] What is at stake in a literature, in a philosophy, in a politics perhaps, is to bear witness to differends by finding idioms for them. […] In the differend, something "asks" to be put into phrases, and suffers from the wrong of not being able to be put into phrases right away. This is when the human beings who thought they could use language as an instrument of communication learn through the feeling of pain which accompanies silence (and of pleasure which accompanies the invention of a new idiom), that they are summoned by language, not to augment to their profit the quantity of information communicable through existing idioms, but to

[7] Much analytic philosophy of disagreement has consisted of investigating what this background consists in, and how it should be understood – whether in terms of 'hinge commitments', 'beliefs', 'preferences', and so on. Lyotard responds to this in terms of 'phrase regimen', 'genres of discourse' and a philosophy of communication which accounts for the different ways epistemic injustice can take place on the level of disagreement.

> recognize that what remains to be phrased exceeds what they can presently phrase, and that they must be allowed to institute idioms which do not yet exist.
>
> (Lyotard 1988, 13)

Human beings exist 'in' and are summoned to action by the differend: the gap between what should be said and what can presently be said, where wrongs are suffered because things are not able to be communicated when they should be. Because this gap exists, complete consensus between all people is always impossible: "reality entails the differend." (Lyotard 1998, 55)[8] Appealing to common ground in resolving disputes must take its point of departure not from a common pool of epistemic resources, but ultimately in a common political *sense* or *feeling* of the differend, a sensitivity to the gaps in our collective resources, a duty to try and fill them, and a recognition of the radical complexity of and the numerous incommensurable positions within social life. For Lyotard, the epistemic paradigm in the analytic literature on deep disagreements does not go deep enough to recognise the source of and potential starting-point for resolving them. Ultimately, it is not a question of epistemic resources, but a question of political feeling, a common sense of justice and the need for honestly reckoning with the plurality of political life. New ways of speaking, therefore, must be continually invented that speak to specific differends, bearing witness to the unstable, antagonistic space between what must be said and what can be said, the space where differends as deep disagreements take place.

Lyotard's 'differend' calls us not just to find ways to ameliorate deep disagreements by facilitating communication, but to find new ways to navigate disputes altogether, which do not force an agreement to take place, thereby resulting in the silencing of one of the parties in

[8] This puts Lyotard, to some degree, in accord with Fogelin: some disputes cannot be resolved because the conditions for their resolution at the time are absent, and certain things must be agreed upon or shared for productive discussion to take place.

favour of the other. In deep disagreements, where neither side can agree on the terms of the dispute or a fair solution, settling the dispute at all "would wrong (at least) one of them" (Lyotard 1988, xi) because they will not feel they have been judged fairly. Their viewpoint will have been suppressed in favour of their opponent's, their ways of making sense of things, their standards of fairness denied in favour of another's. In deep disagreements, coming down in favour of one side will inevitably leave the other side feeling 'wronged', no matter how many 'appeals to facts', counterarguments or attempts at persuasion are offered. But to be truly honest about the complex and pluralistic nature of political life would be 1) to recognise that not everyone can agree and 2) to try and find ways to approach disputes that do not necessarily force an agreement by ruling in favour of one party at the expense of the other. Differends are cases where argument, rationality and language fail us, and addressing these types of situations and learning to cope with the gaps in our conceptual resources that make them possible is "the problem of politics." (Lyotard 1988, xiii)

The 'Fundamental Epistemic Principle' View of Deep Disagreement

As Rinalli[9] and Lavorerio have both suggested, the analytic literature on deep disagreement has branched into two camps or "families of theories" (Lavorerio 2021, 5) that disagree over the root cause of deep disagreements. These families of theories are oriented around the ideas of 'fundamental epistemic principles' on the one hand, and 'hinge epistemology' on the other. According to these views, these ideas account for why deep disagreements happen, and why they are especially difficult to resolve rationally.[10] For our purposes here, I will use Michael P. Lynch as representative of the 'fundamental epistemic principle' view and Duncan Pritchard

[9] Rinalli, C. '*What is Deep Disagreement?*' *Topoi*. 40. 2021. pp. 983-998.
[10] It should be noted that neither family of views "form[s] a homogenous group" (Lavorerio 2021, 6) and there is controversy within both camps, especially over what 'hinges' are.

for the 'hinge epistemology' view, since they have both received much attention in the literature and represent arguably the strongest versions of these views.

Lynch defends the view that participants of deep disagreements disagree over what he calls 'fundamental epistemic principles' (FEPs)[11], which "provide a criterion according to which some source of information or method for forming beliefs can be considered generally reliable." (Lavorerio 2021, 6) These principles are 'fundamental' because they are so integral to a subject's way of making sense of things that they "can't be shown to be true without employing the source that the relevant principle endorses as reliable". (Lynch 2016, 250) Any attempt to justify an FEP "will always be subject to a charge of circularity" (Lynch 2016, 250) because it will make use of something else in a person's epistemic system of thoughts, beliefs, opinions, arguments (etc.) that relies on the principle in question. While this may be fine for the person holding the principle, it will not convince anyone holding a conflicting one – hence, deep disagreement. People that disagree over conflicting FEPs will disagree over what the principles legitimize, so there will be incommensurable differences over what counts as evidence, argument, and justification for the claims in question, meaning that neither side will be able to convince the other because neither side will be able to give the other epistemic reasons for their FEPs that they will find convincing within their epistemic system, or perhaps even accept as making sense at all. Convincing someone with an 'epistemic' reason, for Lynch, is to "move her to change her commitment-state on the basis of a reason that would make sense internal to her perspective." (Lynch 2016, 252) But deep disagreements involve people who disagree over FEPs, so their perspectives are bound to have a different internal structure:

[11] Lynch, M. P. '*After the Spade Turn: Disagreement, First Principles and Epistemic Contractarianism*.' *International Journal for the Study of Skepticism*. Vol. 6, no. 2-3. 2016. pp. 248-259. p. 250

whatever reasons they propose, derived from these principles, will not be found convincing by someone who adopts a perspective shaped by different FEPs.

While Lynch argues that it is not possible to give 'epistemic' reasons for believing FEPs, it might be possible to offer 'practical' reasons for being committed to them, derived from

> methods […] that everyone – just by being human – can appeal to […] [, such as] those that persons concerned to advance their interests would endorse in a position of epistemic and social equality. […] [This] approach is not itself a direct reason to favour any particular principle. It is, rather, a procedure for identifying practical reasons we already possess for having some epistemic commitments over others.
>
> (Lynch 2016, 257)

While Lynch does not commit himself to the view that all deep disagreements are resolvable, he does suggest that there is always a way to approach them rationally, a procedure which appeals to a different, 'practical' kind of common-sense type of reason to generate other reasons for believing or disbelieving the claims in question, rather than reasons derived from an FEP. This procedure would not be concerned with proving or disproving a particular claim, but in generating a space of productive discourse between the parties involved that might generate a common understanding, even a resolution, to their dispute by exploring practical reasons for adopting certain epistemic commitments over others.

The 'Hinge Epistemology' View of Deep Disagreement

Hinge epistemology accounts of deep disagreement are influenced by the three occurrences of the word 'hinge' in Wittgenstein's *On Certainty*[12] and the arguments associated with them, and

[12] Wittgenstein, L. *On Certainty*. Anscombe, G. E. M. and Von Wright, G. H. (Eds.) Trans. Pauld, D. and Anscombe, G. E. M. Basil Blackwell. Oxford. 1969.

also attempt to explain the cause and potential resolution of deep disagreements.[13] For hinge epistemologists, deep disagreements occur because of a clash of conflicting 'hinges' (the exact nature of which is debated), rather than FEPs. Duncan Pritchard, a notable proponent of a 'hinge epistemology' of deep disagreement, uses the term 'hinge commitments' in describing Wittgenstein's view in *On Certainty*:

> all rational evaluation takes place relative to a backdrop of basic a-rational commitments, commonly known as hinges. These *hinge commitments are essentially a-rational because the fact that they need to be in place in order for rational evaluations to occur means that they cannot be rationally evaluated themselves* (hence the 'hinge' metaphor: the hinges must stay in place in order the 'door' of rational evaluation to turn).[14]

Hinges are commitments that we hold to be certain, but not on rational grounds. Rather, they are presupposed, taken for granted, so that rational evaluation is made possible: "the very practise of offering reasons, whether in support of a belief or as a basis for doubt, presupposes these hinge commitments."[15] I cannot investigate anything without tacitly assuming many other things to be true without rationally justifying them, such as the fact that I am speaking the language I think I am, that I am the person I think I am, and so on. Such things and others like them cannot meaningfully be doubted or justified because it is their assumption on my part that makes my doubting and justifying possible – they prop up my epistemic system, without being a part of it.

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[13] The key passage being the following: "The *questions* that we raise and our *doubts* depend on the fact that some propositions are exempt from doubt, are as it were like hinges on which those turn. […] We just *can't* investigate everything and for that reason we are forced to rest content with assumption. If I want the door to turn, the hinges must stay put." (Wittgenstein 1969, 341)

[14] Pritchard, D. '*Wittgensteinian Hinge Epistemology and Deep Disagreement*.' *Topoi*. 40. Special issue on '*Disagreement: Perspectives from Argumentation Theory and Epistemology*.' 2018. p. 3. Emphasis added.

[15] Pritchard, D. '*Wittgenstein and the Groundlessness of Our Believing*.' *Synthese*. Vol. 189, no. 2. November 2012. pp. 255-272. p. 257

Many of the passages in *On Certainty* reflect on what sense it would make to doubt, or prove, hinge commitments – like the fact I have two hands. If I doubted that I have two hands and tried to prove this by using some complicated scientific method, would I not have more reason to doubt this infinitely more complex system of investigation and proof than I do to doubt the very basic fact that I have two hands? How can something I doubt be proved by something I have more reason to doubt? Someone that doubts hinge commitments like this, for Wittgenstein, is simply not being rational: to play the game of rationality, I must be committed to the hinges that make it possible, otherwise I would doubt everything, and "a doubt without an end is not even a doubt." (Wittgenstein 1969, 83) Hinges form, to use another Wittgensteinian phrase, the "scaffolding of our thoughts" (Wittgenstein 1969, 29) and our rationalizing: they provide the necessary support for it without being rational themselves. If hinges are a-rational and play an important role in making our rational investigations possible, perhaps people that disagree deeply do so because of a clash of conflicting hinge commitments: since hinge commitments are held a-rationally, they "are not responsive to rational considerations (not directly, anyway)". (Pritchard 2018, 3)

The apparent 'epistemic incommensurability' between parties to deep disagreement, the lack of common ground and impossibility of a directly rational solution of the hinge view might lead some to worry that it must "inexorably lead to a kind of *epistemic relativism*, whereby the dispute in question cannot even in principle be resolved on a purely epistemic basis". (Pritchard 2018, 2) Pritchard rejects this by arguing that there is an *über hinge commitment* which all other hinge commitments are manifestations of: the "overarching commitment that *we are not radically and fundamentally in error in our beliefs*." (Pritchard 2018, 6, emphasis added) All

parties to deep disagreements, no matter how diverse their perspectives, arguments or hinge commitments are, will always have the über hinge commitment in common, so there will always be some shared collective resources to appeal to for the resolution of disagreements. Deep disagreements, therefore, do not involve the kind of 'epistemic incommensurability' that would lead to relativism, since this incommensurability "involves two completely closed epistemic systems confronting each other, such that there is no common epistemological ground on which to assess the dispute". (Pritchard 2018, 10) Such a situation never arises because our hinge commitments are "essentially overlapping." (Pritchard 2018, 10) All our hinge commitments "are simply codifying, given one's wider set of beliefs, one's overarching über hinge commitment." (Pritchard 2018, 11) Deep disagreements, therefore, can always be approached rationally:

> While it would be fruitless in the face of deep disagreement of this kind to try to change someone's hinge commitments head-on, there will always be a rational way of engaging with the other party by looking to common ground (common beliefs, common hinges), and using that common ground to try to change their wider set of beliefs. If this is achieved, then over time, one can change the other person's hinge commitments. More precisely, as their wider set of beliefs changes, so too will the specific hinge commitments which manifest their über hinge commitment (which never changes).
>
> (Pritchard 2018, 11)

Deep disagreements may be difficult to resolve, but it is always in principle possible by rationally engaging what the disputants have in common, as opposed to confronting the disputed hinge commitments 'head-on'. Interestingly, "a side-on approach to these disagreements has the potential to open-up *both* parties to a change in views" (Pritchard 2018, 11), perhaps facilitating a common understanding of each other's points of view than a hinge epistemology might initially seem like it allows for.

It is interesting that, despite disagreeing about the root cause of deep disagreements, both Lynch and Pritchard claim that a rational, side-on approach to resolving them is viable. Both claim that, despite their initial intractability, there will always be a pool of shared epistemic resources that can be appealed to in addressing deep disagreements. Such a procedure would not involve directly persuading the other to change their fundamental principles and commitments but circling around them and appealing to their wider set of beliefs to find something in common that a resolution of the deep disagreement could be based on, keeping the discussion productive and ongoing. Lynch speaks of practical reasons that would make sense to both parties, Pritchard of shared hinge commitments that scaffold our epistemic systems, but in both cases the level at which deep disagreements are conceived – in source and resolution – is epistemic, and on the level of language. At stake here is finding new ways for parties to deep disagreement to talk to each other, new ways that their positions can be articulated and approached, different types of reasons for believing or disbelieving their principles or hinges that can facilitate further discussion. As Turner/Wright point out, the problem is not always transparent disagreement over the truth or falsity of propositions, or principles. Deep disagreements go deeper than this, the problem being that we can differ even in

> our sense of what procedures are standard: one man's facile eloquence is another's splendidly instructive figure. Which explains why, in general, when we try to discuss matters on which we do not share a sense of what appeals are acceptable, the problem is one of *communication*, resulting in cross purposes more than transparent disagreement. For these differences affect the very significance of the words expressing the judgments based on them. (Turner/Wright 2005, 34)

Often, what is decisive in deep disagreements is that, because of their disparate epistemic principles, or hinges, epistemic systems (and so on), it can be impossible for people even to make sense of each other's statements, understand why they are saying them, what they mean, or the reasons one could have for believing them. Pritchard and Lynch both seem to agree on

this: facilitating communication by finding new, productive ways for disputants to talk to each other is vital to addressing deep disagreements.

In what follows, I will examine Lyotard's work on the 'differend', and the philosophy of the 'phrase' which accompanies it, arguing that it offers an alternative to the epistemic paradigm of deep disagreement that the FEP and 'hinge' views exemplify. Conceiving of the source and resolution of deep disagreements epistemically, ultimately, does not get to the bottom of the issue, since the source and resolution of deep disagreements lie at a level more fundamental than the epistemic – the open, incomplete nature of language, the radical complexity of human society and a common political sense of these facts and the need to deal with them.

Deep Disagreements, Differends and Lyotard's Philosophy of the Phrase

Lyotard's initial definition of 'differend' is worth quoting at length because it has multiple key terms in it:

> a *differend* would be a case of conflict, between (at least) two parties, that cannot be equitably resolved for lack of a rule of judgment applicable to both arguments. One side's legitimacy does not imply the other's lack of legitimacy. However, applying a single rule of judgment to both in order to settle their differend as though it were merely a litigation[16] would wrong (at least) one of them (and both of them if neither side admits this rule). […] A *wrong* results from the fact that the rules of the *genre of discourse* by which one judges are not those of the judged genre or genres of discourse. […] a universal rule of judgment between heterogeneous genres is lacking in general.
>
> (Lyotard 1988, xi, emphasis added)

[16] Lyotard uses 'litigation' to mean something close to what Fogelin calls a 'normal disagreement': a dispute which either can be settled because both sides agree on a common criterion by which their dispute can be judged, or where productive communication and argument can continue.

Unpacking the philosophical framework behind this definition can be best approached by considering the technical terms ‘phrase’, ‘phrase regimen’ and ‘genre of discourse’. For Lyotard, all language and communication consists in the linking together of ‘phrases’, all of which are “constituted according to a set of rules” (Lyotard 1988, xii) that determine how and when they are deployed, in what way, and what sense they make when they are. A phrase is anything that presents at least one ‘phrase universe’ (Lyotard 1988, 13, 70), which consists of the following four elements:

1) An *Addressor*: Who the phrase is coming from.
2) An *Addressee*: To whom the phrase is addressed.
3) A *Sense*: What the phrase means.
4) A *Referent*: What the phrase refers to.

(Lyotard 1988, 13, 70)

Phrases are not limited to written and spoken language – anything that has these four elements is a phrase, meaning that all language, all communication, is always already plural and irreducible in nature, implying a connection between people, contexts and ideas which cannot be reduced further than these four elements. This irreducible complexity at the heart of language is part of the reason that the root of deep disagreement is not, fundamentally, epistemic – it can be traced back even deeper than this, to the very nature of our language itself. Language is irreducibly complex, and there is no way that we could ever have a complete understanding of every phrase, every phrase universe, every meaning, and every connection presented in phrases. There will always be more phrases: “there is no final phrase, another phrase must link onto it” (Lyotard 1988, 127). This means that being able to comprehend the totality of language, gain a God’s-eye-view on it, or represent the totality of phrases and meanings objectively in language so that we can dispassionately and correctly adjudicate every dispute epistemically, will always be impossible. More phrases will always keep coming and new meanings will always keep being produced if there are human beings around to produce

them. Hence why Lyotard proclaims that "a universal rule of judgement […] is lacking in general" (Lyotard 1988, xi): there is no possibility of a final epistemic judgement with respect to deep disagreements partially because of the nature of our language. It is inherently incomplete, inherently open, and we could never hope to have a complete objective perspective on it that would allow us to resolve disagreements on epistemic terms once and for all. This would be the true cause of deep disagreements, for Lyotard, not clashes in our epistemic principles, systems, and resources, but in the very fabric of the language which makes our epistemic practises possible. It is this rupture in language that 'the differend' comes to stand for in one of the senses Lyotard uses it. Deep disagreements are necessitated by this rupture and incompleteness in our language, and the fact that language is always open and developing, but this is what makes our language the way it is, and without this language we could not do anything remotely epistemic. By locating the source of deep disagreements in the epistemic, the analytic literature risks doing an injustice to the deepness of deep disagreement – it does not go deep enough. The picture Lyotard paints in *The Differend* arguably does much more justice to the nature of our language, the increasingly pluralistic and mixed nature of our societies, and the fact that this means deep disagreements will always occur and not all will be resolvable. It represents a challenge to the epistemic paradigm of the analytic literature on the root cause of deep disagreements, and what makes them deep: not the epistemic, but in the open, incomplete, irreducibly complex language that makes the epistemic possible.

This picture is complicated even further by the fact that phrases extend beyond what we might normally call language. Even something like "silence is a phrase" (Lyotard 1988, xii), as are facial expressions, noises, body language (and so on), and phrases need not be the product of individual people: organisations and collectives can be addressors/addressees. Events are phrases: a gunshot or a bombing presents a phrase universe – they come from somewhere, are

addressed somewhere, have meaning, and refer to something. Phrases link on to each other, and since everything we say and do is a phrase, we cannot avoid being part of this process of the linking together of phrases: "for there to be no phrase is impossible […] to link is necessary, but how to link is not." (Lyotard 1988, 66) There is something ontological about the way Lyotard speaks of phrases: he claims "there is no non-phrase" (Lyotard 1988, xii) and even goes so far to say that, along with time, the phrase is "what withstands the test of universal doubt." (Lyotard 1988, 59) For Lyotard, we live in a world of phrases, an infinitely complex network of overlapping meanings and significations that we must navigate: since everything we do or say is a phrase, it is impossible that a person can exist and not be involved in this network.

Whether or not we agree with Lyotard that *everything* is constructed by phrases, we can appreciate the applicability of the concept and the associated technical terms of 'phrase regimen' and 'genre of discourse' for the philosophy of deep disagreement – it is on the level of phrases, in communication, that deep disagreements happen. The kind of disagreements that Lyotard is primarily interested in are the kind where a wrong can be committed against one of the participants because of the case being settled. Because parties to disagreement cannot agree on how their dispute can be judged, settling the dispute in favour of one would 'wrong' the other because they will not feel as though they have been judged fairly, in a way that they would accept as legitimate, in a way that accords with their perspective and how they make sense of things. Regardless of who is 'correct' or 'incorrect', deep disagreements give rise to situations where people suffer because they cannot make themselves understood, and their way of making sense gets suppressed in favour of another's. Deep disagreements involve a 'wrong' insofar as the participants can be silenced as a result, because they cannot testify to their wrong in a language that will be understood by their interlocutor.

No matter what form a phrase takes, it obeys regimen - rules that determine how a phrase is used and what category it belongs to. Lyotard lists "reasoning, knowing, describing, recounting, questioning, showing, ordering" (Lyotard 1988, xii) as examples, but it is by no means an exhaustive list and we could, for instance, add everything that Wittgenstein famously listed in section 23 of the *Philosophical Investigations*[17] to it. Phrase regimen are the things we can do with phrases and the rules that we must follow to do them. For something to be an order, it must obey certain rules – it must tell someone to do something. Questions must be asked, to illicit information, raise problems, as part of a joke, etc. When responding to other people's phrases, we pick the regimen that we want to use and how. For example, if someone said to me 'I'm having an abortion', there are many ways I could meaningfully respond. I could try and be understanding or consoling ('I can't imagine what you're going through'), I could offer help ('If you need anything, you can call me'), I could ask 'why?', and so on. When a phrase is presented to me, it is up to me how I respond to it and how I want to respond will determine what type of regimen I employ, when, and what sense they make when I do. Every person, every language, country, culture, makes use of the same regimen, but clearly not everyone uses them in the same way all the time. The 'genres of discourse' that people subscribe to determine how they use phrase regimen.

"Genres of discourse supply rules for linking together heterogeneous phrases" (Lyotard 1988, xii), permitting certain ways of responding to people and denying others, prohibiting certain forms of linkage from making sense at all. This leads to deep disagreements because people

[17] Wittgenstein, L. trans. G. E. M. Anscombe, P. M. S. Hacker and Joachim Schulte. *Philosophical Investigations*. Wiley-Blackwell. Oxford. 2009. p. 15

subscribe to different genres of discourses, meaning they speak, think and make sense of things differently and certain forms of linkage will, for them, be prohibited. There are countless genres of discourse, countless possible combinations of them, and countless ways they may interact and conflict with each other. Lyotard is pessimistic about universally resolving all disputes (or resolving individual disputes in the short term) but more optimistic about the long term: genres of discourse evolve, new ones are produced constantly and so, therefore, are new ways of linking phrases together. This means that, in the future, new ways of articulating ideas across genres of discourse will come into being that are now unavailable to us – meaning certain deep disagreements will be easier to resolve.

Returning to the example of someone having an abortion, there are certain genres of discourse that, if subscribed to, would permit certain responses to make sense. Genres of discourse are inherently social and political, shared by people and constructed through communal language use around social practises. They are systems of thought and belief encoded into language use, implying certain ideological commitments and cultural positioning. Christian fundamentalists, for example, could reply ‘do you think you’ll enjoy it in hell?’ and to them this is a meaningful statement because their interpretation of the genre of discourse of Christianity conveys a certain significance onto this phrase, and permits such a way of linking onto phrases to make sense. To someone of different ideological inclinations, who subscribes to different genres of discourse, these phrases and these ways of linking them together will not make sense and they will not understand them. This is one way that deep disagreements can happen: people of differing genres of discourse collide because the ways of linking phrases together, their ways of communicating, are incompatible. They do not just disagree; they do not make sense to each other, and the reason this is possible is because of the differend at the heart of our language and our society, this unstable gap between what must be said and what can be said.

This is Lyotard's way of theorizing what philosophers of disagreement call 'hinge commitments', 'shared backgrounds' or 'framework propositions'. Our genres of discourse, I claim, contain both what Lynch might call 'fundamental epistemic principles' *and* what Pritchard calls 'hinge commitments', and I think Lyotard would agree. For Lyotard, the things that clash in disagreement are commitments to genres of discourse which permit certain a person's linking together phrases in a certain way and determine how and when they make use of phrase regimen. Genres of discourse imply certain ideological commitments, according to which certain ways of communicating and behaving will be permitted, and others forbidden from being meaningfully expressed. Christianity and Islam are different genres of discourse, as are religion and atheism, and progressivism and conservatism. Within the ways these genres of discourse can manifest will be hinge commitments *and* fundamental epistemic principles about many things, whether they are hinge commitments to a God or the way that society should be, or fundamental epistemic principles about how we evaluate argumentative claims or understand our political and socio-economic structures. Our genres of discourse are comprised of both hinge commitments and FEPs, and both hinge commitments and FEPs determine how we communicate with each other, how we link phrases together, and how, for what, and when we make use of phrase regimen. Because Lyotard's philosophy offers a level of fundamentality deeper than the epistemic analytic paradigm of deep disagreement, he can provide a theory which encompasses both of the dominant families of views within it.

Certain ways of speaking and linking will inevitably be incommensurable between people, and a clash of incommensurable genres of discourse can lead to deep disagreement, the failure of communication. It is not necessarily that people must share certain genres of discourse to avoid

deep disagreements, but what is crucial is that people do not have *incommensurable* genres of discourse, or incommensurable ways of linking phrases together. This, for Lyotard, is what distinguishes a specific 'differend' from a normal disagreement: in a normal disagreement, the genres of discourse of the participants may differ, but not so much that they cease to be able to communicate. In differends, however, the participants' genres of discourse directly contradict their opponent's ways of communicating, forbidding them from making sense or counting as legitimate, resulting in a deep disagreement. For Lyotard, the clash of 'hinges', 'framework' propositions or 'fundamental epistemic principles' consists in the clash of incommensurable genres of discourse, which involve both phenomena that the two most prominent families of theories locate as the source of deep disagreement. Both 'hinge commitments' and 'fundamental epistemic principles' feature in genres of discourse, and both can be responsible for deep disagreement.

Lyotard argues that incommensurable genres of discourse can cause deep disagreements, but he is particularly interested in the injustices that can happen when we try to resolve them. One of the biggest problems with deep disagreements is that, because neither side can agree on how the dispute should be judged, resolving in favour of one of them will leave the other 'wronged' because they will not feel as though the dispute has been judged fairly: their standards of fairness will have been denied in favour of their opponent's. Even if the dispute has been 'resolved', by a judge or jury ruling in favour of one party, or an organization or country carrying out an act of international law, or whenever a group of people around a deep disagreement decide that one is right and the other wrong, one side will inevitably feel unfairly treated. In such cases, the wronged party becomes a victim of a type of injustice that Lyotard views as being particularly important for our politics. Ideally, we should not have cases like this, and we should try to make it so both sides of deep disagreements feel they have had a fair

hearing. Ultimately, a state of complete consensus between all people is impossible, but this is the situation we must idealistically work toward by creating new ways of speaking, new genres of discourse, that might facilitate common understanding between parties to deep disagreements. Perhaps this act of creation can lead us towards the location of common FEPs or finding new ways to appreciate the commonalities in our 'hinge commitments' that Lynch and Pritchard suggest.

But more importantly, Lyotard's philosophy is a call for us to appreciate and find ways to live in a radically complex world with many incommensurable political, epistemic, and cultural differences. This means finding new ways to approach deep disagreements that do not involve suppressing, eliminating, or otherwise wronging the opposition in any form. Treating disagreements as primarily epistemic problems with epistemic sources, that is, as problems of knowledge, beliefs, facts, arguments (etc.), might lead us to think that every deep disagreement has a potential solution we can find, or that one side must necessarily be 'correct' and the other 'incorrect'. But this would be to miss the part of the point – deep disagreements cannot be reduced to epistemic issues that require epistemic solutions; they are problems of politics. The epistemic aspects of deep disagreements are no doubt important, and there are cases of dispute that can be appealed to using epistemic resources and the types of methods that Lynch and Pritchard suggest, but deep disagreements often do not admit of epistemic solutions because their source can ultimately be traced back to things that do not admit of epistemic evaluation or rational persuasion. Often, deep disagreements have been 'resolved' by one side being ruled in favour of at the expense of the other, who is silenced (or worse) as a result. Lyotard's philosophy calls for us to create new, non-epistemic ways of approaching deep disagreement that do not force a solution which only one side will accept, which appeals to a shared political sense of the differences inherent to our world and aims to live peacefully despite them. Forcing

a resolution onto truly deep disagreements can lead to types of injustice where people are wronged as a result – Lyotard's contribution to the deep disagreement lies in its call to move us away from the epistemic paradigm towards their inherently political aspect and find new ways to deal with these cases of dispute.

Lyotard and Epistemic Injustice

The point about how injustices can be suffered because of deep disagreement leads us to another reason Lyotard's work has relevance here: its sensitivity to problems of what is now often referred to as 'epistemic injustice', which Miranda Fricker characterized as "a wrong done to someone specifically in their capacity as a knower" (Fricker 2007, 1). This can clearly lead to cases of deep disagreement and the failure of productive communication, but it is also clearly relevant for Lyotard. Lyotard uses a holocaust-denying argument as an example of what could plausibly be called an epistemic injustice in Fricker's sense, and argues that the Jewish people, following WWII, were in a situation where they suffered because of a gap in our collective resources which made them unable to make sense of their suffering in a language the rest of the world could understand.

The Differend opens with an argument from Robert Faurisson, a holocaust-denier:

> His argument is: in order for a place to be identified as a gas chamber, the only eyewitness I will accept would be a victim of this gas chamber; now, according to my opponent, there is no victim that is not dead; otherwise, this gas chamber would not be what he or she claims it to be. There is, therefore, no gas chamber.
>
> (Lyotard 1998, 3-4)

It is not just that there is something logically wrong with his argument – no doubt there are many reasons to doubt its validity and soundness. If this argument were put to an Auschwitz survivor, they could suffer an epistemic injustice as a result. This argument is intended to

undermine the epistemic competency of someone to testify about an event they have experience of, wronging them specifically in their capacity as a knower. According to this argument, a survivor of Auschwitz is not capable of giving credible evidence or proof of the existence of gas chambers and their use to commit genocide on the Jewish people. But it is clearly an argument made in bad faith, designed to undermine or silence the testimony of the victims. As Lyotard writes,

> the "perfect crime" does not consist in killing the victim or the witnesses (that adds new crimes to the first one and aggravates the difficulty of effacing everything), but rather in obtaining the silence of the witnesses, the deafness of the judges, and the inconsistency (insanity) of the testimony. *You neutralize the addressor, the addressee, and the sense of the testimony; then everything is as if there were no referent* (no damages). If there is nobody to adduce the proof, nobody to admit it, and/or if the argument which upholds it is judged to be absurd, then the plaintiff is dismissed, the wrong he or she complains of cannot be attested. He or she becomes a victim.
>
> (Lyotard 1988, 8, emphasis added)

Faurisson's argument is an attempt to neutralize the four elements of the witness' testimony that are required, in Lyotard's philosophical framework, for making sense and counting as a meaningful phrase. The addressor is found to be incompetent by the addressee(s), the sense of the testimony is delegitimized, so everything behaves as if there were no referent. The argument is meant to divest the interlocutor of the means to argue for their case, to able to testify to it, even though they have the capacity to do so as a knowing subject with first-hand experience of the event. In other words, this is an epistemic injustice, and perhaps Fricker and Lyotard, using a different vocabulary, are in accord with how some variations of it can take place.

But this is a specific case involving an argument put forward in bad faith, and there are other ways that epistemic injustices can arise on the level of our collective epistemic resources, where

critical concepts and the means to express them are lacking. Indeed, Lyotard argues that, following WWII, the Jewish people were unable to adequately express to the rest of the world the wrong that had been wrought on them, the crime being of such a magnitude that the language and concepts adequate for the "expression of the wrong done them by the Final Solution" (Lyotard 1988, 56) were lacking. There was, therefore, a differend between the Jewish community and global community, due to the lack of common modes of linking together phrases that would permit an understanding of their suffering as a people. The situation remained beyond communication, and they suffered the wrong of not being able to express it as a result. Analogously to Fricker's example of a person who suffers epistemic injustice by suffering sexual harassment in a culture that lacks that concept, the Jewish people lacked the capacity to convey meaningfully their collective suffering, so unspeakable was the crime of the holocaust. However,

> By forming the State of Israel, the survivors transformed the wrong into damages and the differend into a litigation. By beginning to speak in the common idiom of public international law and of authorized politics, they put an end to the silence to which they had been condemned. (Lyotard 1988, 56)

The formation of Israel not only provided a geographical homeland for many displaced Jews, it fostered a different kind of communication between the Jewish people and the global community. They were now able to communicate in an official capacity with the world at large in a common, international socio-political language and begin the process of coming to terms with what had happened. This is not to say that this process has been completed, but it is an example of the creation of new ways of speaking, new genres of discourse, that Lyotard speaks of as being crucial for addressing differends (in the sense of specific cases of deep disagreement).

Conclusion

In this paper, I set out to make the relatively modest case that Lyotard's philosophy (especially *The Differend*) is relevant for the analytic philosophy of deep disagreement because it pursues similar questions for similar reasons and proposes interesting solutions to them. I argued that Lyotard's theoretical framework, constructed around the concepts of 'differend', 'phrase', 'phrase regimen' and 'genre of discourse', encompasses and can make sense of the central concepts from the most prominent families of theories in the analytic literature on deep disagreement: the 'fundamental epistemic principle' and 'hinge' views. However, I also wanted to make the more difficult case that Lyotard's philosophy offers a compelling alternative to the 'epistemic paradigm' of the analytic philosophy of deep disagreement represented by these two types of views. While they highlight important aspects of deep disagreement and propose approaches to resolving them, when it comes to conceptualizing the source and resolution of deep disagreements, they miss what is really 'deep' about them. Lyotard shows how the cause and solution of deep disagreement can be located in the inherently incomplete, ruptured nature of our language and the lack of collective conceptual resources for expressing certain things - which 'the differend' comes to signify. Ultimately, deep disagreements bottom out at the level of ontology, politics and feelings, rather than a place of reason, knowledge, arguments, and facts. This level, deeper than that of our epistemic practises, is where the true source of deep disagreement is found. Any type of resolution to deep disagreements must begin not in appealing to common epistemic resources (though this will no doubt be helpful in some cases), but to a shared sense of the radically complex and pluralistic nature of our political world and the amount of often incommensurable differences within it. A politically honest and progressive approach to deep disagreement must involve a shift away from viewing them as purely epistemic problems with epistemic solutions towards being able to navigate disputes without forcing an agreement or somehow silencing the 'wrong' party, which has often

happened with disastrous consequences. Sometimes, epistemic solutions to deep disagreements will be lacking, and the problem then becomes about figuring out how to live together despite our differences. Lyotard's work, in *The Differend* and beyond, is concerned with precisely this problem.

Having made these points, I demonstrated Lyotard's relevance to the analytic philosophy of deep disagreement further by discussing how his work responds to questions of what has become known as 'epistemic injustice', following Miranda Fricker. Fricker discusses post-structuralist philosopher Michel Foucault in this text, acknowledges his contribution to the philosophy of knowledge and power and its implications for analytic discussions of epistemology and politics. His inclusion enriches her argument and contributes to further lessening the problematic, arguably spurious 'divide' between 'analytic' and 'continental' philosophy. For whatever reason, Lyotard has not found much of a reception within analytic philosophy despite sharing similar, politically motivated concerns about the topics they discuss. Discussions around deep disagreement could benefit from Lyotard's philosophy in the same way that discussions of epistemic injustice benefit from the inclusion of Foucault – and epistemic injustice is also clearly relevant for discussions of deep disagreement.

Lyotard is one of the most overtly and consistently political philosophers in the western canon, and one singularly driven in *The Differend* by problems of politics, justice, and fairness. It is time that such a text - one of the most sophisticated, dedicated treatments of deep disagreement in European philosophy, using sources from Plato to Kant to Hegel to Wittgenstein in the process - joins the analytic discussion of deep disagreement. Philosophers sympathetic to a Wittgenstein-influenced view, or those that want to investigate epistemic justice in the context

of deep disagreement, will find much to appreciate in Lyotard, and those antagonistic to such views will find different, perhaps in some ways stronger versions of them to oppose in Lyotard. But more importantly, I have argued, Lyotard's conceptual framework and his approach to deep disagreement pose a serious challenge to the current paradigm of the analytic literature on the topic, and presents, perhaps, a powerful alternative to it.

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