1

**PM-1 3½"x4" PHOTOGRAPHIC MICROCOPY TARGET
NBS 1010a ANSI/ISO #2 EQUIVALENT**

PRECISIONSM RESOLUTION TARGETS

National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Tout le monde s'en rend compte

Quel que soit le résultat

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

**Extending the Dimensions of Justice:
Feminism, Citizenship and Rights in Postmodern Modernity**

by

Melanie Allison White, B.A.

**A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements for the degree of**

Master of Arts

**Department of Sociology and Anthropology
Carleton University
Ottawa, Ontario
August 11, 1995**

© 1995, Melanie White

National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395 rue Wellington
Ottawa (Ontario)
K1A 0N4

Author - Bibliothèque

Author - Bibliothèque

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-612-08933-9

Name MELANIE WHITE

Dissertation Abstracts International is arranged by broad, general subject categories. Please select the one subject which most nearly describes the content of your dissertation. Enter the corresponding four-digit code in the spaces provided.

THEORY AND METHODS

SUBJECT TERM

0 3 4 1

SUBJECT CODE

U·M·I

Subject Categories

THE HUMANITIES AND SOCIAL SCIENCES

COMMUNICATIONS AND THE ARTS

Architecture 0729
Art History 0377
Cinema 0900
Dance 0378
Fine Arts 0357
Information Science 0723
Journalism 0391
Library Science 0399
Mass Communications 0708
Music 0413
Speech Communication 0459
Theater 0465

EDUCATION

General 0515
Administration 0514
Adult and Continuing 0516
Agricultural 0517
Art 0273
Bilingual and Multicultural 0282
Business 0688
Community College 0275
Curriculum and Instruction 0727
Early Childhood 0518
Elementary 0524
Finance 0277
Guidance and Counseling 0519
Health 0680
Higher 0745
History of 0520
Home Economics 0278
Industrial 0521
Language and Literature 0279
Mathematics 0280
Music 0522
Philosophy of 0998
Physical 0523

Psychology 0525
Reading 0535
Religious 0527
Sciences 0714
Secondary 0533
Social Sciences 0534
Sociology of 0340
Special 0529
Teacher Training 0530
Technology 0710
Tests and Measurements 0288
Vocational 0747

LANGUAGE, LITERATURE AND LINGUISTICS

Language 0679
General 0289
Ancient 0290
Linguistics 0291
Modern
Literature 0401
General 0294
Classical 0295
Comparative 0297
Medieval 0298
Modern 0316
African 0591
American 0505
Asian 0352
Canadian (English) 0355
Canadian (French) 0593
English 0311
Germanic 0312
Latin American 0315
Middle Eastern 0313
Romance 0314
Slavic and East European

PHILOSOPHY, RELIGION AND THEOLOGY

Philosophy 0422
Religion
General 0318
Biblical Studies 0321
Clergy 0319
History of 0320
Philosophy of 0322
Theology 0469

SOCIAL SCIENCES

American Studies 0323
Anthropology
Archaeology 0324
Cultural 0326
Physical 0327
Business Administration
General 0310
Accounting 0272
Banking 0770
Management 0454
Marketing 0338
Canadian Studies 0385
Economics
General 0501
Agricultural 0503
Commerce Business 0505
Finance 0508
History 0509
Labor 0510
Theory 0511
Folklore 0358
Geography 0366
Gerontology 0351
History
General 0578

Ancient 0579
Medieval 0581
Modern 0582
Black 0328
African 0331
Asia, Australia and Oceania 0332
Canadian 0334
European 0335
Latin American 0336
Middle Eastern 0333
United States 0337
History of Science 0585
Law 0398
Political Science
General 0615
International Law and Relations 0616
Public Administration 0617
Recreation 0814
Social Work 0452
Sociology
General 0626
Criminology and Penology 0627
Demography 0938
Ethnic and Racial Studies 0631
Individual and Family Studies 0628
Industrial and Labor Relations 0629
Public and Social Welfare 0630
Social Structure and Development 0700
Theory and Methods 0344
Transportation 0709
Urban and Regional Planning 0999
Women's Studies 0453

THE SCIENCES AND ENGINEERING

BIOLOGICAL SCIENCES

Agriculture
General 0473
Agronomy 0285
Animal Culture and Nutrition 0475
Animal Pathology 0476
Food Science and Technology 0359
Forestry and Wildlife 0478
Plant Culture 0279
Plant Pathology 0480
Plant Physiology 0812
Range Management 0777
Wood Technology 0746
Biology
General 0306
Anatomy 0287
Anesthesiology 0308
Botany 0309
Cell 0379
Ecology 0329
Entomology 0353
Genetics 0369
Limnology 0793
Microbiology 0410
Molecular 0307
Neuroscience 0317
Oceanography 0416
Physiology 0433
Radiation 0821
Veterinary Science 0778
Zoology 0472
Biophysics
General 0286
Medical 0760

EARTH SCIENCES

Biogeochemistry 0425
Geochemistry 0906

Geodesy 0370
Geology 0372
Geophysics 0373
Hydrology 0388
Mineralogy 0411
Paleobotany 0345
Paleoecology 0426
Paleontology 0418
Paleozoology 0985
Palynology 0427
Physical Geography 0368
Physical Oceanography 0415

HEALTH AND ENVIRONMENTAL SCIENCES

Environmental Sciences 0768
Health Sciences
General 0566
Audiology 0300
Chemotherapy 0992
Dentistry 0567
Education 0350
Hospital Management 0769
Human Development 0758
Immunology 0982
Medicine and Surgery 0564
Mental Health 0347
Nursing 0569
Nutrition 0570
Obstetrics and Gynecology 0380
Occupational Health and Therapy 0354
Ophthalmology 0381
Pathology 0571
Pharmacology 0419
Pharmacy 0572
Physical Therapy 0382
Public Health 0573
Radiology 0574
Recreation 0575

Speech Pathology 0460
Toxicology 0383
Home Economics 0386

PHYSICAL SCIENCES

Pure Sciences
Chemistry
General 0485
Agricultural 0749
Analytical 0486
Biochemistry 0487
Inorganic 0488
Nuclear 0738
Organic 0490
Pharmaceutical 0491
Physical 0494
Polymer 0495
Radiation 0754
Mathematics 0405
Physics
General 0605
Acoustics 0986
Astronomy and Astrophysics 0606
Atmospheric Science 0608
Atomic 0748
Electronics and Electricity 0607
Elementary Particles and High Energy 0798
Fluid and Plasma 0759
Molecular 0609
Nuclear 0610
Optics 0752
Radiation 0756
Solid State 0611
Statistics 0463
Applied Sciences
Applied Mechanics 0346
Computer Science 0984

Engineering
General 0537
Aerospace 0538
Agricultural 0539
Automotive 0540
Biomedical 0541
Chemical 0542
Civil 0543
Electronics and Electrical 0544
Heat and Thermodynamics 0348
Hydraulic 0545
Industrial 0546
Marine 0547
Materials Science 0794
Mechanical 0548
Metallurgy 0743
Mining 0551
Nuclear 0552
Packaging 0549
Petroleum 0765
Sanitary and Municipal 0554
System Science 0790
Geotechnology 0428
Operations Research 0796
Plastics Technology 0795
Textile Technology 0994

PSYCHOLOGY

General 0621
Behavioral 0384
Clinical 0622
Developmental 0620
Experimental 0623
Industrial 0624
Personality 0625
Physiological 0989
Psychobiology 0349
Psychometrics 0632
Social 0451

The undersigned recommend to the Faculty of Graduate Studies
and Research Acceptance of the thesis

**Extending the Dimensions of Justice:
Feminism, Citizenship and Rights in Postmodern Modernity**

submitted by Melanie Allison White, B.A.
in partial fulfilment of the requirements for
the degree of Master of Arts

Thesis Supervisor

Chair, Department of Sociology and Anthropology

Carleton University
September 15, 1995

Abstract

The ambivalence of postmodern challenges to citizenship, rights and justice has important implications for democratic politics in postmodern modernity. The theoretical challenges wrought by postmodernism - characterized by critiques of enlightenment humanism, scientific rationality and totalizing metanarratives - have the potential either to augment or to undermine our modern conceptions of citizenship, rights and justice. Informed by a feminist commitment to radical democratic politics, this thesis interrogates the various ways that postmodern theory - articulated by Jacques Derrida, Michel Foucault, Jean-François Lyotard - bears on these categories. While citizenship and rights do not represent universal truths in postmodern modernity, I argue that they nevertheless retain the potential to be deployed strategically in discursive struggle. A conception of justice, grounded in discourse ethics, serves as a normative foundation which guides the treatment of citizenship and rights for feminist ends in postmodern modernity. The reformulation of these categories in postmodern modernity marks a modest contribution to developing a theory of the third way.

Acknowledgements

I want to extend my warmest thanks to Alan Hunt and Amy Bartholomew. I wish to express my sincere thanks to Alan Hunt for pushing me to be both more generous at times and more critical in others. I am especially thankful for his friendship and his constant generosity and kindness. Not least of all, I am particularly grateful to Amy Bartholomew whose eleventh hour question provided me with the cement that glued the various strands of this project together. Her constant support and friendship throughout the completion of this project cheered me when things often seemed at their dimmest.

I also want to acknowledge Eleanor MacDonald whose graduate seminar on the political economy of postmodernism provided me with the ideas and questions that eventually developed into the project that unfolds here.

My friends and colleagues at Carleton have given me immeasurable support on both intellectual and emotional levels. I am indebted to each of the following for the wealth of their knowledge, the pride of their convictions and their commitment to improving the society in which we live: Nicole Bennett, Catherine Browning, Fuyuki Kurasawa, Kirsten McAllister, Valerie Percival, and Sharan Samagh. Over the course of the past two years my housemates Joyce Lundberg and Danielle Takoff have provided me with a cheery and compassionate home for which I will be forever grateful.

I also wish to acknowledge the generous financial support provided by Carleton University without which this project would never have been completed.

And finally, I would like to acknowledge the support of my family and in particular my mother, Margot White, to whom this thesis is dedicated.

Table of Contents

<i>Acceptance Form</i>	ii
<i>Abstract</i>	iii
<i>Acknowledgements</i>	iv
<i>Table of Contents</i>	v
 CHAPTER 1	
Postmodern Challenges and the Anchors of Modernity: Citizenship, Rights and Justice in Social and Political Thought	1
<i>The Ambiguity of Postmodern Modernity</i>	3
<i>Modern Feminism and Postmodern Modernity</i>	11
<i>Citizenship, Rights and Justice in Postmodern Modernity</i>	16
 CHAPTER 2	
Modern Citizens and Postmodern Subjects: The Politics of Citizenship in Postmodern Modernity	21
<i>Defining Citizenship in Postmodern Modernity</i>	22
<i>Challenging the Citizen in Postmodern Modernity: Foucault and Derrida</i>	23
<i>The Politics of Citizenship: Feminism and Post-Colonialism</i>	33
 CHAPTER 3	
Facing the Postmodern Challenge: Rights, Plurality and Universality	40
<i>Understanding Rights in Postmodern Modernity</i>	42
<i>Postmodern Challenges and Rights Discourses: Lyotard and Gaete</i>	42
<i>Feminism and the Politics of Rights</i>	57
 CHAPTER 4	
Beyond a Postmodern Justice? Deconstruction, Ethics and Plurality	62
<i>Conceptualizing Justice in Postmodern Modernity</i>	64
<i>The Problem of Justice in Postmodern Modernity: Lyotard and Derrida</i>	65
<i>Beyond a Postmodern Justice? Citizenship and Rights in Postmodern Modernity</i>	79
 CONCLUSION	82
 References	85

Chapter 1

Postmodern Challenges and the Anchors of Modernity: Citizenship, Rights and Justice in Social and Political Thought

The colonization of social theory by postmodernism has important implications for contemporary democratic politics. Emerging from debates in critical legal studies which examine the ways that postmodernism has come to bear on law, this project contributes to what Alan Hunt has termed the 'sociological movement in law' [1978:3]. As much as postmodernism has influenced contemporary social theory, an analysis of the various ways that postmodernism impinges on categories of law and democracy has not been forthcoming. Although postmodernists have generally not addressed these concerns, to the extent that citizenship, rights and justice are grounded in the liberatory discourse of the Enlightenment, they are particularly vulnerable to postmodern critiques.

Comprised of a series of challenges levelled at Enlightenment humanism, scientific rationality and modern universality, postmodernism has been ambivalent toward these categories of democratic politics. While strong versions of postmodernism risk relativism at best, a weak version of postmodernism, one that contributes to a theory of the third way by reconceptualizing some of the problematic assumptions on which modernity is based, has the potential to retrieve these concepts from the critiques offered by more extreme forms of postmodernism. Given that the modern citizen is based on the unitary self-present subject of modernity, for example, citizenship could be undermined by strong versions of postmodernism extolling the 'death of the subject'. The postmodern critique of totality, moreover, challenge the foundations on which universal rights discourses are based. Modern discourses on justice, informed by a form of instrumental rationality, could in turn be threatened by postmodern challenges to Enlightenment rationality.

The ambivalence of postmodernism suggests, however, that even as a strong form of postmodernism threatens modern conceptions of citizenship, rights and justice, a weaker

version contains the potential to contribute productively to their reformulation. Given that citizenship depends on the unitary self-present subject of modernity, a weak version of postmodernism, one that situates the subject, can be used in conjunction with a post-metaphysical conception of subjectivity, defined as 'radical humanism'. The idea of a radical humanist subject recognizes the sites of its own contingency but, manages to retain a commitment to the emancipatory ideals of the Enlightenment. Based on a radical humanist subjectivity, I argue that citizenship can be inscribed in a multiplicity of power-knowledge relations and therefore, can be deployed in discursive struggle. To the extent that the universal articulation of rights discourses in modernity could be undermined by the postmodern challenges to totality, I suggest that postmodern critiques can be deflected if universality is understood to be both contingent and particular. And where postmodernists have generally neglected the problem of justice, they have recently begun to examine the limitations of modern theories of justice. In an effort to extend the dimensions of justice then, postmodern theorists have expressed concern for the ways that plurality and injustice have been neglected in modern conceptions of justice.

This chapter situates these concerns in the context of recent debates exploring the prospect of a theoretical conjuncture between feminism and postmodernism. Modern feminism, based on the emancipatory discourse of the Enlightenment, provides a much needed political context in order to ground postmodern theoretical concerns. Likewise, postmodernism acts as a useful corrective to the universalizing proclivity of western feminism. I argue that these debates provide an important perspective from which to examine the various ways that postmodernism has come to bear on citizenship, rights and justice. This perspective contributes to a theory of the third way, a perspective which argues that social criticism can benefit from the insights offered by a weak version of postmodernism. A theory of the third way, as articulated by Richard Bernstein, Jürgen Habermas and Axel Honneth, engages with weak forms of postmodernism in order to contribute to reconceiving the project of modernity.

I. The Ambiguity of Postmodern Modernity

Postmodernism is a term which has been invoked in order to characterize both an ontological condition and a set of theoretical concerns. In the first place, recent social trends - the rise of new social movements, the proliferation of multiple identities and burgeoning globalization - have given rise to a conception of postmodernism which attempts to capture the ambiguities of our current social condition. In the second place, postmodern theory, consisting of a series of challenges to modern social and political thought, is characterized by the critiques of scientific rationality, modern humanism and overarching metanarratives. By emphasizing the local and the particular, postmodernism challenges the aggrandizing tendencies of modern social theory. Because postmodernism has been identified both as an ontological status and as a set of theoretical issues, providing a working definition of postmodernism could prove to be a difficult task.

The first definition of postmodernism, one that attempts to describe the nature of our current ontological condition, depends on the perception of a break or rupture with modernity such that postmodernism becomes associated with a new moment of transition. While the postmodern condition has often been defined negatively against the perceived failures and shortcomings of modernity, it has also been used to characterize - in more positive terms - the transition to a new information age coinciding with the exteriorization of knowledge [Lyotard 1984:4]. This shift from modernity to postmodernity, however, requires a particular conception of the modern to serve as a point of departure for the emergence of a distinctly postmodern condition. Derived from the Latin term *modernus*, the concept of the modern emerged in the late fifth century as a means of distinguishing the official Christian present from the pagan Roman past [Habermas 1981:3]. Until the seventeenth century, the term 'modern' was generally invoked in order to distinguish the old from the new. A significant outcome of the transition between the Scientific Revolution of the seventeenth century and the eighteenth century Enlightenment, however, was that the concept of modernity was no longer used exclusively to distinguish the ancient from the

modern. In fact, modernity became identified with the present, the here and the now. As such, the concept of modernity became associated with contemporary social formations formed by the series of democratic and industrial revolutions of the eighteenth and nineteenth centuries and became distinct from other traditional social formations.

Peter Wagner argues that as much as prevailing discourse on modernity centres on notions of freedom and autonomy, two oppositional narratives within modernity have emerged: the 'discourse of liberation' and the 'discourse of disciplinization' [1994:5]. Narratives of liberation, based on principles of autonomy, self-determination and freedom from state intervention belie the availability of, and access to individual liberties. This inconsistency suggests that a discourse of disciplinization, while distinct from narratives of emancipation, coincides with the discourse of liberation. A discourse of disciplinization then, actively regulates social practices in order to discipline individuals. Wagner contends that the conflict between the narratives of liberation and disciplinization requires the coexistence of two aspects of Enlightenment thought - a regulating strand and a self-guiding strand. He argues that "[t]he regulating strand suppresses the right to individual autonomy of those who are classified as unfit for modernity. The self-guiding strand, while underlining the idea of individual autonomy, neglects questions of what the substantive aspects of human life are and how they can be identified and approached" [1994:9].

The ambivalent relationship between liberty and discipline in modernity is recognized by several social theorists. Habermas, for instance, associates modernity with the emancipatory impulse of the Enlightenment and argues that, while modern society has not yet achieved liberation, there is potential to learn from the mistakes of our predecessors. Modernity in this context is viewed positively - as part of a process which is, as yet, incomplete [1981:9]. Habermas also argues, however, that modernity also contains within it, disciplinary tendencies which are apparent at the point when the system colonizes the lifeworld [1987]. In the *Dialectic of Enlightenment*, Horkheimer and Adorno argue that as

much as "social freedom is inseparable from enlightened thought" the Enlightenment still contains within it the "seeds of self-destruction" [1972:xiii]. Modernity then, is understood to be both contradictory and ambivalent. Berman captures these ambiguities in a portrait of modernity that is marked by a reign of confusion and perpetual disintegration in which "all that is solid melts into air" [1982:15]. This confusion is located in a series of social and economic upheavals that are defined as part of the process of modernization which "even as it exploits and torments us, brings our energies and imaginations to life" [1982:348]. Even though modernity is ambivalent, it remains a mode of vital experience and, therefore, retains the capacity for critique and renewal.

The purported shift from a modern condition to a postmodern condition suggests a formal break with the project of modernity. Yet, how the prefix 'post' is interpreted bears on the relationship between modernity and postmodernity in two immediate ways. First, by interpreting postmodernism negatively vis-à-vis modernity, postmodernists risk defending an anti-modern position. Jean-François Lyotard argues, for example, that the postmodern condition reflects the growing 'incredulity toward metanarratives' which, he suggests, are foundational elements of the modern project [1984a:xxiv]. By challenging the universality of these narratives of legitimation, Lyotard reveals the extent to which positivism has represented the entirety of knowledge in modernity. Because universalizing tendencies within modernity tend to obscure those narratives which form the basis of the social bond, the actual processes of legitimation are rendered invisible. According to Lyotard then, postmodernity challenges the totalizing impulses within modernity by celebrating the principle of incommensurability: "[T]he answer is: Let us wage a war on totality; let us be witnesses to the unrepresentable; let us activate the differences and save the honour of the name" [1984:82]. A major difficulty with this type of anti modern characterization, according to Douglas Kellner, is that Lyotard risks dehistoricizing the transition between modernity and postmodernity by contrasting the totalizing impulses of modernity with the principles of heterogeneity and incommensurability [1990:267]. The

rhetorical flair of Lyotard's critique in this context tends to render postmodernity in universalizing terms. Postmodern challenges to modernity on these grounds are suspicious to the extent that postmodernism has been contradictory about the universalizing nature of its own critique [1990:269].

If the postmodern condition represents an epochal transformation, then it is becomes necessary to situate postmodernism after modernity in both time and space. By locating postmodernity in concrete social relations, attempts to periodize it vis-à-vis modernity try to fix postmodernism securely in a particular spatial and temporal context in an effort to historicize it. David Harvey, for instance, argues that the condition of postmodernity can be understood as the product of a modern "crisis of overaccumulation" where the experience of time and space contributes to a collapse of "the confidence in the association between scientific and moral judgements" [1989:328]. Similarly, Scott Lash suggests that postmodernism inhabits a "cultural paradigm" which reflects a particular "spatio-temporal configuration" [1990:4]. Where modernism has come to represent an era of differentiation, commodification and technological advancement, postmodernism reflects a time of de-differentiation, simulation and erosion of boundaries [Lash 1990:11]. Just as Harvey implies that the condition of postmodernity follows directly from modernity, Lash argues that postmodernity inhabits a specific 'regime of signification' where the proliferation of new collective and individual identities marks an intensified mode of consumption [1990:40]. Along these lines, Frederic Jameson argues that because the postmodern condition expresses the 'cultural logic of late capitalism,' it reflects the idea of consumption as the process of sheer commodification where culture becomes part of a new economic landscape [1984:x].

Attempts to periodize postmodernism are problematic to the extent that elements typical of modernity exist alongside those aspects of a postmodern ontological condition. Even if we argue that postmodernity reflects an intensification of the project of modernity such that postmodernism becomes modernity 'personified', the argument that we live in a

state of hypermodernity is in itself, not sufficient to suggest that an epochal transformation has actually occurred.¹ As Anthony Woodiwiss points out, postmodern theorists have tended to confuse the conjuncture of various social forces with an epochal transformation [1993:6]. The suggestion then, that we live in an unequivocal condition of postmodernity tends to homogenize the complexities and contradictions extant within everyday life. By emphasizing the ambiguities that pervade our current social condition, Woodiwiss' portrait of postmodernity shares with Berman's understanding of modernity the idea that our present ontological state is both contradictory and ambiguous. One of the central difficulties about characterizing postmodernity then, is analyzing the extent to which a postmodern condition can actually exist. Even as our current social condition may be experiencing a metamorphosis, to suggest that this represents an *epochal* transformation overstates the postmodern case.

A second definition of postmodernism consists of a series of theoretical concerns directed at challenging the foundations of modern thought. Characterized by the various critiques directed at scientific rationality, grand metanarratives and the sovereign subject of modernity, postmodern theory tends to emphasize diversity and therefore, defends the local and the particular. While postmodern theory may have originated from a series of artistic movements in architecture, literature and popular culture, it has come to represent the critique of foundationalist knowledge based on scientific truth and the critique of the idea of infinite progress, an idea that reinforces the notion that humans have the capacity for self-transformation.² However, describing postmodernism this way, Eleanor MacDonald argues, simply lists characteristic elements of postmodernity without developing a necessary logic or structure of association [1991a:12]. In this context the only coherence a description of postmodernism can have, she suggests, is by virtue of its opposition to Enlightenment thought. Because postmodern critiques fail to account for the alternative

¹ See During [1987] for an examination of the notion of postmodernity as a state of hypermodernity.

² See Flax [1988; 1990] for a more expansive list of the characteristics of enlightenment thought and their relationship to modernity.

ways that the Enlightenment, or modernity for that matter, have been contested by Marx, Horkheimer, Adorno and Husserl for example, they tend to oversimplify the complexity of the relationship between modernity and social criticism [1991a:13].

Stephen White's notion of 'postmodern modernity' incorporates the ambiguities that postmodernism has brought to bear on social and political thought. Acknowledging that the project of modernity is, as yet incomplete, the idea of a postmodern modernity still recognizes the emancipatory impulse of the Enlightenment. The notion of 'postmodern modernity' is similar to Habermas' conception of late modernity, yet is preferred here because the juxtaposition of these terms better recognizes the equivocacy of our times. The concept of postmodern modernity suggests that traditional concepts and modes of understanding fail to address adequately the complexities and contradictions of the postmodern condition. And while it may appear to be a contradiction in terms, the term captures the inherent tensions and contradictions that postmodernism has brought to bear on our current social condition. A postmodern modernity, therefore, "implies that our modernity is riven by phenomena that are not easily comprehended within familiar cognitive social structures. If the term is awkward and ambiguous, so is the social reality it claims to describe" [White 1991:4].

Because features of postmodernism appear along with more modern phenomena, postmodernism does not refer to the experience of a specific ontological condition for the purposes of this project. As much as characterizing postmodernism as a set of theoretical issues may be considered inadequate, the idea of a postmodern theory, ensconced in postmodern modernity, provides a way of grouping together some important theoretical concerns. For my purposes then, postmodernism refers to the confluence of a series of theoretical positions - as typified by Jacques Derrida, Michel Foucault and Jean-François Lyotard - and includes a respect for difference, a critique of the unitary subject of the Enlightenment, and a disdain for the totalizing impulses of modernity.

While strong forms of postmodernism may risk charges of relativism and nihilism, postmodern theory acts as a useful corrective to the universalizing and totalizing impulses of modernity which could render the diversity of local experiences invisible. Poststructuralist critiques of modernity - drawing on arguments suggesting that the structuralist movement failed to break entirely with humanism - share some important theoretical points of contact with postmodernism. However, as I argue here, poststructuralism constitutes a part of the larger critique offered by postmodernism. The uncertainties and general malaise of this moment in social theory require a broader theoretical framework which can incorporate the overwhelming sense of anxiety present in contemporary social theory. As such, while postmodern theory has been variously received - some rejecting it outright, others embracing it in its entirety - this project marks an attempt to engage critically with weak forms of postmodernism in order to not only extend the bounds of social criticism, but also to contribute to a theory of the third way.

A weak version of postmodernism contributes to a theory of the third way to the extent that the project of modernity can benefit from its insights. That postmodernism can be used to advance the project of modernity raises an interesting question about what type of distinction can be made, if any, between modern social critique and a weak version of postmodernism. The blurring of boundaries between these forms of critical interrogation suggest that the divide between modern and postmodern social criticism is a difficult one to establish. Following Bernstein, however, if we conceive of postmodernism as constituting neither a rupture nor a break with modernism, but rather a new constellation, then it no longer becomes necessary to establish a dividing line between modern and postmodern forms of critique.³ Bernstein suggests that the metaphor of the constellation is useful because he wants "to show that our 'modern/postmodern' situation or predicament is one that defies and resists any and all attempts of reduction to 'a common denominator,

³ Bernstein borrows the 'constellation metaphor' from Martin Jay for whom a constellation is a "juxtaposed rather than integrated cluster of changing elements that resist reduction to a common denominator, essential core, or generative first principle" [Bernstein 1991:8].

essential core, or generative first principle" [1991:8]. He argues that "[W]hat is 'new' about this constellation is the growing awareness of the depth of radical instabilities. We have to learn to think and act in the 'in-between' interstices of forced reconciliations and radical dispersion" [1991:9]. The ambivalence then, of the relationship between a weak postmodernism and modern critique, if understood within the context of this new constellation, implies that postmodernism is, in fact, embedded within the project of modernity. What the idea of the new constellation underscores is that where modern and postmodern forms of critique converge, they can contribute productively to reconceiving some of the problematic assumptions of modernity. That postmodern modernity may be ambivalent does not mean that the contradiction it inheres is negative, rather it marks the critical and productive engagement with concepts and ideas that inhabit the realm of the new constellation. And as part of this commitment to a theory of the third way, the critical interrogation of the challenges that postmodernism has brought to bear on citizenship, rights and justice, in this project, draws on a conception of discourse ethics in order to reformulate these categories in more sophisticated ways.

One of the difficulties associated with a critical examination of these concepts in postmodern modernity is the extent to which sociological theories of democracy have traditionally relied on fairly narrow conceptions of political participation in democracy. Johann Arnason suggests that democracy's limited scope in sociological theories of modernity has contributed to "the proliferation of incompatible versions of the idea of democracy, as a result of its appropriation by incompatible political cultures" [1990:20]. While social theorists have begun to consider democracy in a larger, more participatory context, little attention has been directed toward interrogating the potential effects of postmodernism on democracy.⁴ Categories like citizenship, justice and rights have become particularly vulnerable to strong forms of postmodernism in this context to the

⁴ See Cohen and Arato [1994], Castonadis [1991], Arnason [1990], Keane [1988] and Lefort [1988] for some recent insights into the relationship between modernity and democracy. These contributions however, with the possible exception of Cohen and Arato [1994], neglect to examine the effects of postmodern theory on conceptions of democracy.

extent that they depend on the emancipatory ideals of the Enlightenment for their articulation. Given the ambiguous relationship between modernity, postmodernism and democracy, the theoretical basis of citizenship, justice and rights could either be strengthened by the postmodern commitment to participation and diversity, or undermined by the postmodern critique of the Enlightenment. Hence, the particular way that these concepts are elaborated will have significant implications for their articulation in postmodern modernity.

II. Modern Feminism and Postmodern Modernity

An important feature of postmodern modernity is the theoretical conjuncture shared by postmodernism and modern feminism. Postmodernism, as Georgia Warnke suggests, is attractive to feminists for two reasons [1993:81]. First, postmodernism not only questions the underlying assumptions of Enlightenment universalism, but it also offers a critique of Enlightenment humanism. Feminism, based on a critique of the universal oppression of women, converges with the postmodern war on totality. And where feminists challenge the gendered subject of the Enlightenment, postmodernism also challenges the transcendent nature of the sovereign subject of modernity. Second, postmodernism provides a useful corrective to the universalizing tendencies within feminism itself. Non-western feminists have argued that western feminists tend to ignore the ways that the category 'woman' is discursively constructed and is constituted, not only by gender, but also by race, ethnicity and class. Western feminists have been charged with defending an abstract conception of the category 'woman' which falsely generalizes the concerns of individual women constituted by intersecting relations of domination.

Feminist concerns for difference have generated an interest in postmodernism because it marks the "convergence of a number of discourses each of which opens up new possibilities for positioning the self" [McRobbie 1993:129]. A tension exists, however, between this recent interest in postmodernism and feminist demands for emancipation.

Feminism, grounded in the liberatory discourse of modernity, requires a conception of agency on which feminist practice can be based. Postmodernism, however, challenges the foundations of liberatory discourse by contesting the various ways that conceptions of subjectivity, rationality and metaphysics have been theorized in modernity. The tension between feminism and postmodernism seems to suggest that the two movements are, in fact, basically incompatible. Christine di Stephano, for example, argues that postmodernism tends not only to be gender-blind, but also inhibits women's ability to articulate claims as political subjects [1988:75]. Yet, the ambivalence of postmodern modernity suggests that postmodernism has the potential to be either liberatory or repressive and if used in conjunction with feminism, postmodernism could indeed benefit from feminist political aims.

Seyla Benhabib's distinction between 'strong' and 'weak' versions of postmodernism is a useful way of diffusing this tension [1992:214]. Benhabib suggests that by suspending the subject in signifying chains, the 'strong' version of postmodernism could expunge individual agency. This version of postmodernism underscores the 'death of the subject'.⁵ The 'weak' version of postmodernism, in contrast, merely situates the subject "in the context of various social, linguistic and discursive practices" [1992:214]. Positioning the subject this way allows for the possibility of situated criticism where feminists can challenge intersecting relations of domination without succumbing to universalizing narratives about women. As Linda Alcoff points out, positionality "allows for a determinate though fluid identity of woman that does not fall into essentialism: woman is a position from which a feminist politics can emerge rather than a set of attributes that are 'objectively identifiable'" [1988:435].

The idea of a weak version of postmodernism is compatible with the notion of radical humanism which, according to Pauline Johnson, relies on an "explicitly post-

⁵ The 'death of the subject' has been vigorously defended by Lyotard [1988:5].

metaphysical conception of the meaning of humanism" [1994:xi]. A post-metaphysical conception of humanism, she argues

"rests on a determination to liberate the humanist 'subjectivity' from all connotations of arbitrary self assertion and instrumentalizing aspirations. As Habermas sees it, a 'post-metaphysical humanism' preserves the ideals of modern humanism long expressed in the ideas of a self-conscious life, of authentic self-realization and autonomy, but disassociates all such commitments from the will and aspirations of any particular social subject" [1994:8].

Radical humanism then, problematizes the category of 'woman' as transcendent and universal and therefore, allows for the positioning of the self in a wide variety of discursive contexts, and yet depends on the principles of liberty, autonomy and freedom for its articulation. Radical humanism acknowledges the ambivalence of the new constellation, postmodern modernity, to the extent that these humanist ideals become "not merely the rhetoric of a disciplinary regime; these values, which have taken share in the course of historical development, must also be affirmed as modernity's crowning if fragile achievement" [1994:xii]. Thus, radical humanism "recognizes that modern humanism is pinned on a dilemma which invades its very core. It recognizes that modern humanism is caught in a paradoxical relation between the universalistic character of its own aspirations and the always particularistic, culture-bound terms in which these universalizing claims are raised" [Johnson 1994:135].

The equivocal relationship between feminism and postmodernism demonstrates the type of ambivalence characteristic of postmodern modernity. Even if we acknowledge that a strong version of postmodernism contains the potential to undermine the liberatory ideals of modern feminism, a weak version of postmodernism - based on a post-metaphysical understanding of humanism - retains an emancipatory potential. Radical humanism, therefore, provides an important contribution to the theoretical conjuncture between feminism and postmodernism to the extent that it marks a commitment to emancipation through a radical democratic politics. The idea of a post-metaphysical humanism retains conceptions of autonomy and freedom, just as it recognizes the various ways that subjects

are constituted by their social, historical and discursive locations. And even as feminism continues to challenge the gendered character of post-Enlightenment thought, a feminism based on a radical humanist conception of subjectivity contributes to the preservation of the emancipatory spirit of the Enlightenment while still respecting postmodern insights. Johnson contends that "[m]odern feminism is...best understood as occupying a double relation to Enlightenment thinking...feminism's protest at imposed gender relations preserves and extends the Enlightenment's emancipatory vision in which human beings are affirmed as the determiners of their own social world" [1994:45].

Feminism and postmodernism then, are compatible to the extent that, as Susan Hekman points out, they "are complementary and mutually corrective. Feminists see the gendered basis of Enlightenment thought but postmodern thought expands and concretizes the vision" [1990:6]. Where postmodernism acts as a useful corrective to the totalizing impulses of modern feminism, feminism subverts the postmodern inclination toward relativism by grounding it in an emancipatory project. For this reason, feminism has been described as the "paradigmatic political discourse of postmodernism" [Kipnis 1988:160]. The theoretical conjuncture between feminism and postmodernism, therefore, reveals the importance of a politically informed social criticism. Yet, the intersection between politics and social criticism should not imply that social criticism can be reduced to politics, but rather, as Alcoff and Potter point out, it raises questions "about the adequacy of any account of knowledge that ignores the politics involved in knowledge" [1993:13]. Viewed this way, feminism can no longer be considered merely a component of the larger project of social criticism because it demonstrates not only the capacity for external critique, but it also exhibits the potential for self-reflexivity. By recognizing that feminism *is* social criticism, this project engages in a form of critique that does not distinguish between feminist criticism and social criticism - for it is my position that feminist critique is, in itself, social critique.⁶

⁶ I owe this formulation to Fuyuki Kurasawa.

The conjuncture between feminism and postmodernism then, contributes to a politics of difference, and for my purposes, a politics based on radical democracy. A feminist politics of difference which subscribes to radical democracy recognizes that it "does not have to be viewed as a rupture from humanism" but can be seen as a "further expression of the ideals of humanism, as a real enrichment of the values already inherent within these ideals" [Johnson 1994:2]. According to Chantal Mouffe, an understanding of the nature of pluralism in radical democracy, requires "a vision of the political as a discursively constructed ensemble of social relations" [1992:11]. But as Mouffe points out, the radical-democratic project is distinct from other forms of postmodern politics that subscribe to the uncritical acceptance of difference and that emphasize the complete valorization of difference [1992:13]. A feminist politics of difference then, must remain sensitive to the ways that difference can contribute to experiences of injustice. The politics that inform difference need to be grounded in an ethical arrangement, like discourse ethics, which develops the ethical context necessary in order to negotiate between various claims to difference.⁷

The intersection between feminism and postmodernism reflects the new constellation inhabited by postmodern modernity. Their ambivalence suggests that their convergence generates the type of creative space necessary to develop the theory of the third way. And as such, this conjecture provides an interesting point of departure from which to interrogate the assumptions that inform modern conceptions of citizenship, rights and justice.

⁷ Even though Mouffe argues that her conception of radical democracy is distinct from the radical democratic project advanced by Habermas, I am not convinced that they are incompatible. As I argue here, Mouffe's understanding of radical democracy can benefit from a discourse ethics informed by Habermas [1987]. While Mouffe rejects modern humanism, I think that her conception of radical democracy can not only benefit from, but is compatible with Johnson's conception radical humanism based on a post-metaphysical conception of subjectivity.

III. Citizenship, Rights and Justice in Postmodern Modernity

The ambivalence of postmodern theory has significant implications for how citizenship, rights and justice can be articulated in postmodern modernity. Much depends on the way that postmodernism is articulated if these concepts are to be retrieved from the potentially devastating critique offered by a strong version of postmodernism. In this context, postmodernism contains the potential to contribute productively to the task of reformulating these categories for postmodern modernity. In the pages that follow, I begin to explore the various ways that aspects of postmodern theory impinge on these categories of law and democracy.

Modern Citizens, Postmodern Subjects

Postmodern challenges to citizenship hinge on the problematization of the unitary self-present subject of modernity. In a political context where the citizen has traditionally been the privileged agent of change, the unitary subject of modernity relies on a problematic conception of the self in relation to the social world. Postmodernists claim that the modern subject erroneously presumes, not only that it is self-constituting, but that its actions are founded on principles of freedom and autonomy. Given that the articulation of citizenship is dependent on the unitary self-present subject in modernity, postmodern challenges to the sovereign subject could have significant implications for citizenship in postmodern modernity [McClure 1992:109]. Philip Wexler, for example, argues that the demise of the subject necessarily entails the death of citizenship [1990:165]. Wexler claims, therefore, that because it is an archaic term, citizenship has no place in postmodernism. As such, the conceptual category of citizenship - encompassing both the 'subject of rights' and the 'subject of political identity' - must yield to postmodern challenges directed toward the sovereign subject of modernity.⁸ The ambiguity of postmodern modernity is demonstrated

⁸ Kymlicka and Norman correctly observe that current literature on citizenship tends to conflate the idea of the citizen as a legal status - defined as membership in a community - with citizenship as a desirable activity - defined in terms of rights and responsibilities [Kymlicka and Norman 1994:353]. This is a particularly difficult problem in the context of postmodern modernity. Through the course of this project I

by Etienne Balibar's suggestion that a revitalization of citizenship is both necessary and imminent. Hence, he argues that the "citizen (defined by his rights and duties) is that 'nonsubject' who comes after the subject, and whose constitution and recognition put an end (in principle) to the subjection of the subject" [1991:38].

These challenges to the unitary subject of modernity, and their effects on citizenship, have coincided with the recent proliferation of interest in citizenship. Stuart Hall and David Held suggest that the emergence of various social forces - shifts in the world economy marked by increasing interdependence, globalization and nationalisms, not to mention the dismantling of the welfare state, in addition to the growing centralization of power and the erosion of local democracies - has initiated a questioning of citizenship's ability to generate social change as a viable category of radical democratic politics [1989:173]. That traditional conceptions of citizenship are inadequate in the face of these recent social changes could either strengthen, or undermine postmodern challenges to modern citizenship. Where postmodernists like Wexler argue that citizenship is *passé*, others have sought to expand the terrain on which citizenship has traditionally been cultivated. Versions of citizenship - global, ecological, European, cosmopolitan - have colonized its more traditional domain [van Steenberg 1994:3]. It seems then, that modern liberal conceptions of citizenship which emphasize rights and duties neglect the various ways that citizenship has been, and can be, discursively, politically and socially constructed. The proliferation of multiple identities, derived from a weak version of postmodernism, seems to indicate that citizenship has the potential to become the "democratic political identity *par excellence*" [Mouffe 1992:6].

Significant is the extent to which postmodernism has been absent in these debates about citizenship.⁹ Not only do these discussions neglect to explore the relationship between citizenship and subjectivity in postmodern modernity, but they have a tendency to

have attempted to distinguish between these components of citizenship. However, I tend to emphasize the citizen as subject of rights in this context.

⁹ Turner [1994] Balibar [1991], and Wexler [1990] are exceptions because they explore the implications of a postmodern critique of Enlightenment humanism for modern citizenship.

ignore the potentially devastating effects that a strong version of postmodernism could have for 'citizens' and 'subjects'. These shortcomings are addressed in Chapter 2 where I examine the contributions of Michel Foucault and Jacques Derrida - two postmodern theorists who offer important insights into the construction of subjectivities in postmodern modernity. To the extent that their observations bear on citizenship in important ways, I will argue that their work contributes to the current project of reformulating citizenship. As such, I will suggest that citizenship can be interpreted as a text vested with a multiplicity of power-knowledge relations which change and evolve over time, ensuring neither a fixed nor unitary conception of citizenship.

Rights Discourses in Postmodern Modernity

The postmodern critique of totality has inspired a series of challenges to universal rights discourses and, as a result, calls into question the continued ability of rights to contest relations of domination in postmodern modernity. Not only is the critique of universalizing metanarratives linked to the postmodern rejection of the unitary self-present subject of modernity, but it is also associated with postmodern challenges to scientific rationality. The problem of rights shares some similarities with the question of citizenship to the extent that the intersection between rights and postmodernism has not been explored in great detail. The absence of available literature examining the effects of postmodern challenges on rights bears witness to this fact. Rolando Gaete, however, is one of the few theorists who examines some of the ways that postmodernism challenges the universality of rights discourses in postmodern modernity [1991]. Drawing on Lyotard's critique of universal narratives of legitimation, Gaete depends on a strong version of postmodernism in order to assess the ways that postmodernism impinges on modern conceptions of rights. His use of a strong version of postmodernism, however, does not leave much room for an examination of possible ways that postmodern theory can be used to reformulate rights discourses more productively in postmodern modernity.

The limitations of Gaete's analysis of rights are analyzed in Chapter 3 where I examine the implications of the postmodern critique of universality for rights discourses. I suggest that the postmodern critique of universality can be reformulated if we consider that the idea of universality is a historicized and contingent product of various intersecting relations of power. Arguing that the postmodern critique of universality does not necessarily undermine rights discourses, I suggest that universality can be rearticulated in a particularized form. Rights discourses then, do not reflect the universal truth of the Enlightenment, rather they mirror the effects of power which, over time, become sedimented in the structures of everyday life. Therefore, in order to arbitrate between competing rights claims, emerging from a variety of social, historical and discursive contexts, I suggest that a conception of discourse ethics can provide the normative grounds which guides the process of adjudication.

Justice in Postmodern Modernity

As much as postmodern challenges to universal truth claims and instrumental reason hold the potential to undermine demands for justice in postmodern modernity, postmodernists have exhibited reluctance to address the problem of justice. While postmodernists tend to appeal to an ethics based on principles of difference and plurality, they have been ambivalent about interrogating the moral claims of justice. Recently, Lyotard and Derrida have each attempted to enlarge the scope of modern conceptions of justice by developing versions of justice which draw attention to questions of diversity and injustice in postmodern modernity. Lyotard, on one hand, develops a conception of justice based on the principle of incommensurability, articulated as either the 'multiplicity of justices' or the 'justice of multiplicity' [1985:100]. Derrida, on the other hand, develops a notion of justice based on the absolute surrender to the Other. Articulated as the 'experience of justice as aporia', this conception of justice is defined in terms of a giving that is never completed [1992:25].

Even though these postmodern attempts to extend the dimensions of justice incorporate a sensitivity to injustice and difference, I argue in Chapter 4 that they are insufficient on their own because they fail to provide a means of evaluating social relations and prescribing human action - important elements of any conception of justice. As such, I argue that the ethical conditions on which these versions of postmodern justice are based are insufficient and require an alternative kind of ethical rationality to bolster their claims. If coupled with Habermas' discourse ethics, I suggest that the move beyond a postmodern justice, based on this ethical commitment, contributes to a theory of the third way to the extent that citizenship and rights can then be grounded in a normative conception of justice which facilitates their strategic deployment in postmodern modernity.

Chapter 2

Modern Citizens and Postmodern Subjects: The Politics of Citizenship in Postmodern Modernity

Modern conceptions of citizenship, grounded in the unitary self-present subject of the Enlightenment, could be undermined by extreme forms of postmodernism which celebrate the 'death of the subject'. The subject of modernity, derived from Enlightenment humanism, seems to require a homogeneous and undifferentiated conception of political activity in which the modern citizen is the privileged agent of political change. Given that the modern subject provides the foundations for citizenship in modernity, the postmodern repudiation of Enlightenment humanism has the potential to undermine the extent to which the citizen can contribute to a radical democratic project.

Postmodern critiques of the modern subject have coincided with challenges levelled against citizenship by those claiming that citizenship has been complicit with the forces of subjugation and oppression in modernity. Iris Young, for example, argues that modern citizenship perpetuates relations of domination to the extent that citizenship, as it is presently articulated, is based on a unitary conception of subjectivity which fails to account for the various ways that citizen-subjects are constituted by class, gender and ethnicity [1989:258]. Bryan Turner also claims that citizenship has been associated with the forces of colonization [1994:159]. The ambivalence of postmodern modernity, however, suggests that postmodernism contains within it the capacity not only to undermine the modern citizen-subject, but also to contribute to its reformulation. The prospect of reformulating citizenship then, could have important implications for these critiques in postmodern modernity. Adopting the argument that the end of the subject necessarily entails the death of the citizen seems neither an interesting nor particularly rewarding way to contribute to a theory of the third way. An exploration of the extent to which postmodernism can productively bear on citizenship seems more interesting to consider.

In this chapter I suggest that Foucault and Derrida have the potential to contribute to the reformulation of citizenship in postmodern modernity. Where Foucault argues that subjects are produced through the normalization of disciplinary practices on the body and the mind, Derrida claims that subjects are produced by *différance*. Rather than eradicating the concept of the citizen altogether, if founded on a post-metaphysical conception of subjectivity, they allow for the possibility of situating citizenship within a series of discursive fields. Citizenship becomes a political category to the extent that it has the potential to change and evolve over time. In other words, citizenship is contestable, neither liberatory nor repressive, and becomes therefore, subject to interpretation. To make the exercise of citizenship meaningful, however, I suggest that citizenship needs to be reinscribed within a liberatory discourse. Before proceeding, I provide a working definition for citizenship in the following section. Next, I consider the ways that Foucault and Derrida contribute to reformulating citizenship. And finally, I examine the consequences of politicizing citizenship for feminist politics.

I. Citizenship in Postmodern Modernity

Liberal discourses on citizenship tend to associate the exercise of citizenship with the modern nation-state. To the extent that the nation-state has been the principal political body according the status of both national identity and political agency to its citizens, citizenship has been traditionally considered a reflex of the nation-state. As Terry Eagleton points out the emphasis in liberalism "has been on the nature of political relations between authorities and subjects and *less* on the system of relations between citizens" [1993:132]. T.H. Marshall (1964) traces the development of civil, political and social rights from the eighteenth to the twentieth centuries and, in so doing, illustrates the ways that citizenship has been constructed by the nation-state. Marshall claims that where citizens in the eighteenth century acquired civil rights, especially those of speech and association, citizens in the nineteenth century were granted the right to vote and as such, citizens became equal -

at least in the political sense of the term. In the twentieth century, citizens were granted social rights - consisting of health, welfare and unemployment benefits - ensuring their further dependence on the nation-state. Even though Marshall's depiction of citizenship deviates from more traditional political-legal definitions which merely outline the formal and substantive characteristics of citizenship, feminists have argued that this kind of definition nevertheless fails to account for the various ways that social and cultural contexts influence the construction of citizenship in everyday life [Mouffe 1992; Pateman 1989; Elshtain 1980]. As such, citizenship has not only been associated with the violence of colonization, but it has tended to perpetuate relations of domination along the lines of class, gender and ethnicity. What political-legal definitions neglect to consider then, are the various ways that citizenship can be contested in social and political life. A sociological definition of citizenship, one that locates citizenship in the context of discursive struggle, can be more sensitive to the ambiguities and nuances which affect the practice of citizenship in postmodern modernity. Hence, Bryan Turner's definition of citizenship as a "set of practices which constitute individuals as competent members of a community" will be adopted here [1994:159].

II. Challenging the Citizen in Postmodern Modernity: Foucault and Derrida

In order to determine the extent to which postmodern theories of the subject can contribute to reformulating citizenship, I consider the contributions of two postmodern theorists: Michel Foucault and Jacques Derrida. Both have provided important insights into the ways that subjects are constructed in postmodern modernity. Where Foucault argues that subjects are constituted by disciplinary practices, Derrida argues that subjects are the effects of textual production. Given that the sovereign subject of modernity has traditionally provided the foundation for modern conceptions of citizenship, the ways that subjectivity is conceived in the new constellation will have significant implications for a theory of the third way. While rigid interpretations of their work could be devastating for

the citizen-subject, I argue that, loosely conceived, Foucault and Derrida contribute positively to the task of revitalizing citizenship. Interpreted as a text vested with a multiplicity of power-knowledge relations that change and evolve over time, citizenship, based on a post-metaphysical conception of subjectivity becomes as a concept that is neither fixed, nor unitary. As a contestable category then, it is an important category for discursive struggle. Citizenship then, becomes significant for feminist interventions in postmodern modernity.

Michel Foucault: A Subject in Discourse

One of the clearest and most sustained challenges to the idea of the rational and autonomous subject of the Enlightenment is found in the work of Michel Foucault. As much as Foucault might have disputed his connection to the French poststructuralist movement, his work is consistent with many of the central features of postmodern theory. Among his contributions to social theory in general, and to postmodern theory in particular, is the idea that subjects as well as objects are constituted by discourse. One of his main insights is that subjects are produced through regimes of power and knowledge, termed disciplinary practices. Foucault's understanding of *genealogy* - a method of interrogation that emphasizes the displacement of the subject to the structure by locating a fissure between past and present - provides the foundation for postmodern claims. As such, *The Order of Things*, *Discipline and Punish*, and *The History of Sexuality, Volume I* have become compelling texts for social theorists in postmodern modernity.¹ Because of the cogent nature of Foucault's critique of enlightenment humanism, I discuss and consider his contribution below.

¹ Foucault's later work on *ethics* in Volumes 2 and 3 of *The History of Sexuality* deviates significantly from his earlier work on *genealogy*. As Eleanor MacDonald notes: "The ethics which he adopts reflect a desire for autonomous and free individuals who act in self-reflective ways to assure a society in which mutual interests are met, and structures of domination undermined. This last stage of Foucault's thought bears some interesting resemblances to Habermas" [1991:70, ff. 37]. Mark Poster also suggests that in this context Foucault bears some resemblance to Sartre's conception of the existential subject [Poster 1989:54]. In these later works, Foucault seems to be moving towards an understanding of a post-metaphysical subjectivity.

Foucault's most elaborate critique of humanist epistemology - that is, at least on a philosophical level - is located in *The Order of Things* (1970). Just as the emergence of humanism in the eighteenth century precipitated the study of Man in the human sciences, so did the development of a rational self constitute the form and possibility of knowledge [1970:310]. The phenomenon of Man is comprised of a series of doublets, for not only is Man the object of analysis for the human sciences, but Man dictates the form of knowledge itself. The first of these, the 'empirico-transcendental doublet', reveals the capacity of Man to constitute the world of empirical objects, and thereby constitutes himself in the process, for "he is a being such that knowledge will be attained in him of what renders all knowledge possible" [1970:318]. The rational self of humanism, therefore, excites the possibility of empirical knowledge, and by the same means prescribes its forms. Second, the 'cogito and unthought doublet' enables Man to question the possibility and means by which he can know what he, in fact, does not think [1970:322]. Man is constructed by discursive forces which he fails to understand, thus he seeks to learn what he does not perceive. Third, Foucault details the emergence of the 'retreat and return of origin doublet.' Here, man is a transcendent being, a being without origin, yet remains the source of all knowledge. Foucault suggests that the unremitting tension between the subject-object dualism within humanism reinforces the failure of the modern subject to transform itself. Because Man is constituted by a multiplicity of different forces, forces which he cannot understand, Foucault argues that Man is unable to transform the nature of his subjection.

The subject's ability to rationalize the uniqueness of its own existence, *cogito ergo sum*, signifies an important epistemological transition which not only transformed the nature of philosophical inquiry but, also dismissed the citizen as an important element of intellectual debate [Clarke 1994:15; Alejandro 1993:11]. According to Alejandro, this transition coincided with two other events which also contributed to the changing status of the citizen. First, the universalization of moral autonomy not only contributed to the weakening of the authority of the Church, but also contributed to the rise of the nation-

state. Second, the separation of social life into public and private spheres protected the individual from the unreasonable intrusion of the state into the private domain [1993:10]. Alejandro argues that the emergence of the sovereign subject, or Man, transformed the character of social life so that "[t]he individual thus displaced the citizen as a central object of reflection, and the citizen became the public garb of the self" [Alejandro 1993:11].

Citizenship becomes susceptible then, as the public garb of the self, to the tension between the subject-object dualism contained within enlightenment humanism. To the extent that citizenship is based on the sovereign subject of modernity, the citizen, like the subject that supports it, is constituted by forces that limit its capacity to transform the nature of its subjection.

Where *The Order of Things* argues that Man is constituted by a series of forces unknown to it, the idea that power shapes the relationship between subjection and subjectivity is explored in *Discipline and Punish* (1979). Foucault develops the idea that a micro-physics of power, capillary by nature, operates at the extremities of the social body and creates the conditions for domination through power-knowledge regimes:

"[W]e should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations" [1979: 28].

Foucault's genealogy of punishment - illustrated by the disappearance of torture as a public spectacle and its replacement by a new economy of surveillance - reveals the effects of disciplinary practices on subjects. The panopticon reflects the emergence of a "general principle of a new 'political anatomy' whose object and end are not the relations of sovereignty but the relations of discipline" [1979:208]. Conceived as an anatomy of power, disciplinary practices are composed of a series of surveillance mechanisms "which may be identified neither with an institution nor with an apparatus, it is a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures,

levels of application, targets; it is a 'physics' or an 'anatomy' of power, a technology" [Foucault 1979:215].

The internalization of these disciplinary practices becomes normalized over time so that the subject becomes incapable of defending itself against the nature of its subjection: "[A]t the heart of the procedures of discipline, it manifests the subjection of those who are perceived as objects and the objectification of those who are subjected" [1979:184-185]. The rational and autonomous subject, constituted entirely by discipline, cannot liberate itself from these technologies of power [Fraser 1989:43]. The central goal of *Discipline and Punish* becomes, according to Peter Dews, "to dissolve the philosophical link - inherited by the Marxist tradition from German Idealism - between consciousness, self-reflection and freedom and to deny that there remains any progressive political potential in the ideal of the autonomous subject" [1987:160]. These interpretations bear witness to the ways that a strong formulation of Foucault's conceptualization of the subject could undermine the citizen's ability to challenge and transform relations of domination in everyday life.

Peter Wagner suggests that the 'discourse of disciplinization' has had important implications for citizenship as the forces of discipline extend further and further into social life [1994:24]. The collection of vast quantities of census information on citizens, for instance, is indicative not only of the processes of formalization, but of the effects of discipline. The incursion of power-knowledge regimes into the active sphere of citizenship - formally understood as the domain of rights and responsibilities - encourages the normalization of surveillance techniques by various state formations. Hence, the process of normalization limits the ability of citizens, as public agents, to transform the nature of their subjection. Wagner remarks that "[o]nly the development of the modern state, from absolutism to the present, is truly marked by the extension of administrative rules into the everyday life of subjects and citizens" [1994:26].

While *Discipline and Punish* explores the nature of disciplinary practices on the human body, *The History of Sexuality: Volume I* (1978) represents an intensification of the effects of knowledge-power regimes on the body *and* the mind. Attacking the 'repressive hypothesis' which has dominated conventional interpretations of sexuality in the Victorian era, Foucault suggests that what has generally appeared as the repression of sexuality is, in fact, more accurately understood as an effect of power [1978:10]. As such, the sexual liberation of the 1960s can be seen as an effect - not of the intrinsic liberatory quality of sexuality - but rather, of the exercise of power. Sexuality then, is more accurately understood as a social and historical construct marking the discursive location of a particular power-knowledge regime, and cannot hold essential characteristics or qualities. Sexuality, therefore, is neither repressive nor liberatory, and 'represents a different deployment of knowledge and power' [Hekman 1990:71]. As such, the pursuit of sexual knowledge, itself invested with power, produces normalized subjects engaged in the process of self-regulation and self-discipline. Operating not only at the level of the human body, the effects of power-knowledge regimes become internalized by the mind. These processes of normalization encourage the production of new subjectivities, and, as Eleanor MacDonald points out, promote the "encroachment of power into ever more minute areas of the psyche and the body, through discourses which enjoin the subject to participate in his or her own subjection" [1991b:59].

Even though citizenship may be constituted by disciplinary practices, that new subjectivities can be produced holds promise for the development of alternative conceptions of citizenship. Citizenship then, can be conceived as a category produced by a multiplicity of discursive fields. And because citizenship is neither essentially liberatory nor repressive, it can be used to advance any type of political program. Thus, citizenship becomes a political category invested in processes of political contestation. As Stuart Hall and David Held point out "[l]ike all the key contested political concepts of our time, it can be appropriated within very different political discourses and articulated to very different

political positions" [1989:174]. Yet, even though citizenship can be used to advance a radical democratic project, it nonetheless contains the potential to be inscribed in discourses of repression.

While a strong interpretation of Foucault would eradicate the possibility of reformulating citizenship, a weak interpretation of his work, based on Jon Simons' intervention permits its reconceptualization. Jon Simons argues that the tension between 'unbearable lightness' and 'unbearable heaviness' in Foucault's *oeuvre* is indicative of an ambivalence toward the way power is conceived in postmodern modernity [1995:6]. Even though power can be repressive, Simons argues that through resistance, power can also be productive. While this tension inhibits the possibility of emancipation, it still produces the conditions for resistance:

"Foucault offers an ethic of permanent resistance. The point is not that humanism can never be overcome, or that it can be replaced only by another system of domination, but that any mode of government entails limits that are apt to harden, tending to become permanent and rigid. This tendency curtails the openness of agonistic relations in which Foucault's 'new subjectivities' thrive. It follows that preferred politics are those which institutionalize the possibilities of agonism. However, even in the best modes of government and subjectification, the practice of liberty calls for resistance" [1995:6].

Practices of freedom, achieved through resistance, are generated by the discourses of liberation derived from the Enlightenment. So, while citizen-subjects may be constituted by disciplinary practices, located as they are in a multiplicity of discursive fields, they retain the potential for resistance.

The grounds for resistance can be based, not on an Enlightenment humanist conception of subjectivity, but on a post-metaphysical conception of subjectivity which subscribes to the liberatory values of freedom, autonomy and equality. A post-metaphysical subject recognizes that it is produced by forces not of its own making and can, therefore, provide the foundations for a version of citizenship grounded in a multiplicity of discursive fields. As a political category then, if citizenship is to be meaningful for radical democracy it needs to be reinscribed within a liberatory discourse. I

want to argue that the feminism provides the foundations for this emancipatory context. Before examining the implications for embedding the politics of citizenship in feminist discourse, I want to examine the ways that Derrida contributes to the task of reformulating citizenship.

Jacques Derrida: A Subject in Language

Jacques Derrida's position on subjectivity is more ambiguous than Foucault's anti-humanist stance. While Derrida makes reference to 'the ends of man' in an early essay (1969), in more recent work he indicates that he does not want to destroy the subject, but rather to situate it [Dews 1987:94]. Derrida's position on subjectivity is at times both equivocal and contradictory. His contribution to the study of language and textual practices, however, has been highly influential in postmodern debates and as such, his work has important ramifications for citizenship in postmodern modernity.

As the author of deconstruction, Derrida warns that deconstruction should not be equated with nihilism or destruction, but should rather be understood as a process of displacement [1976:10]. As Christopher Norris points out, deconstruction is "the vigilant seeking-out of those 'aporias', blindspots or moments of self-contradiction where a text involuntarily betrays the tension between rhetoric and logic, between what it manifestly *means to say* and what it is nonetheless *constrained to mean* " [Norris 1987:19]. The tension between rhetoric and logic is apparent in the hierarchical structure of binary terms. Defined by what they omit, the privileged component of the binary pair relies on the exclusion of what is 'Other.' The conceptual privilege of the 'male' in Western thought, for example, depends on the relegation of the 'female' to the secondary status of Other. Given that these terms are relational, and not oppositional, meaning is derived by the field of differences signified by each term. The aim of deconstruction then, is to overthrow the conceptual hierarchy on which the structure of the text relies.

Subverting the conceptual hierarchy through deconstruction allows us to place each term or sign under erasure [*sous rature*]. The sign then, becomes "effaced while still remaining legible, [and] is destroyed while making visible the very idea of the sign" [Derrida 1976:23]. Marking a sign *sous rature* indicates that the sign used to signify a particular meaning is inadequate because it eclipses the field of differences which actually prescribes understanding in a given context. However inadequate, the sign is still necessary for meaning to exist given that there can be nothing to replace it. The sign of the '~~male~~', for example, is displaced by its relational term, the sign of the 'female'. Deconstruction shows that meaning is not present in the sign itself, rather it is derived from the absence of what the sign obscures. The subversion of these concepts shows that while the nature of their privilege may be problematic, these signs are still necessary for meaning to be produced.

Marking a sign *sous rature* indicates that the structure of the sign is inscribed in the *trace* of previous signs. The structure of a particular sign is determined by trace of preceding signs, ensuring that neither an essence nor an origin can be attributed to the sign. Differences between signs then, can never be absolute. Because traces are located along a whole chain of signifiers, meaning - derived from a succession of signifying chains - can only be determined by the *trace* of preceding signs. For Derrida then, "pure trace is *différance*" [1976:62]. *Différance* is a concept used to signify the simultaneous process of differing - to be unlike - and deferring - to postpone. Because there is no phonetic distinction between *différence* and *différance* in French, any conceptual distinction between the terms is obscured in speech, yet becomes revealed in writing. Because meaning is not absolute, it is derived not only from the differences between signs, but from the series of traces inscribed in the signifying chain of previous signs.

Deconstruction aims to disrupt the conceptual hierarchy between binary terms and to challenge the *logocentric* practices which dominate Western thought. Signifying the ontological priority given to the transcendent subject, logocentrism valorizes one aspect of

the binary relation and, in so doing grounds the epistemological foundations of Western thought. Deconstruction reveals that moment of self-contradiction where one term becomes privileged over another. Where writing has been perceived as a mediated form of inanimate expression, the immediacy of presence in speech has become valorized and cemented in Western thought. These *phonocentric* practices become revealed through deconstruction to the extent that *différance* displaces the hierarchy of speech over writing. In other words, deconstruction displaces the priority given to the subject of presence onto the object of writing. But even though the primacy of presence can be displaced, it cannot be eradicated: "it is not a question of 'rejecting' these [metaphysical] notions; they are necessary and, at least at present, nothing is conceivable for us without them" [Derrida 1976:13].

So while deconstruction undermines the ontological primacy given to the subject, it cannot provide an alternative. By placing the subject under erasure, the subject is revealed as a textual effect. For Derrida "[s]ubjectivity - like objectivity - is an effect of *différance*, an effect inscribed in a system of *différance* " [1981:28].² If the subject is an effect of the text, then other binaries must also reflect the processes of textual production [Dews 1987:98]. What is important about this observation is the extent to which texts can be contested and, therefore, inhabit a strategic terrain. Richard Bernstein argues that:

"[C]ontrary to what many of his critics (including Habermas) claim, Derrida does *not* seek to deny all distinctions and reduce everything to one confused homogeneous text. He does *not* deny there are important distinctions between philosophy and literature or logic and rhetoric. He scrutinizes the precise 'points' where distinctions, dichotomies and dualisms break down and are called into question" [1991:212].

Like the subject that supports it, the citizen must also be produced by texts. And while the category of the citizen may be problematic, by marking the sign *sous rature* citizenship displays that it is still a necessary concept for radical democratic politics. To the extent that citizenship inhabits a discursive terrain, it becomes inscribed in language.

² It is interesting to note that the textual production of the subject bears a resemblance to Foucault's conception that subjects are constituted by disciplinary practices.

Citizenship is a sign which derives its meaning from a succession of signifying chains. Vested with binary relations - identity/non-identity; inclusion/exclusion; and status/non-status - the citizen-sign carries traces from a series of preceding signifying chains. As privileged signs of the binary relationship, the concepts of identity, inclusion, status are valorized and prescribe the meaning of citizenship. Deconstructing the citizen sign entails the displacement of the hierarchy of binary terms and gives primacy, therefore, to the concepts of non-identity, exclusion and non-status. The process of deconstruction opens the category of citizenship up for critical interrogation. Where the dichotomies that inform citizenship break down, the politicization of citizenship occurs. What is important about Derrida's contribution then, is the extent to which citizenship becomes a text to be read, and therefore open for interpretation.³ Evolving and changing over time, citizenship is not an absolute identity, but constitutes a series of traces. Cultivated on a field of contestation which transforms, changes and evolves, citizenship becomes inscribed in a terrain that is inherently political.

III. The Politics of Citizenship: Feminism and Post-Colonialism

The contributions of Foucault and Derrida demonstrate that citizenship, because it is contestable and therefore political, holds the potential to be conceptualized in a variety of different ways. What this means for a radical democratic project informed by feminist politics, however, remains unanswered. For if modern citizenship is contestable, then what does a 'politics of citizenship' mean for the purposes of resistance, if not for emancipation? Do politics, as Terry Eagleton asks, provide a sufficient basis to reject those claims that are morally and ethically repugnant? [1993:124]. While an important question to consider, I want to bracket this problem for the moment in order to examine the implications for a politics of citizenship in postmodern modernity.

³ Roberto Alejandro makes this observation, however his statement is informed by hermeneutics rather than by deconstruction [1993:6].

John Shotter argues that the practice of citizenship can only be meaningful if it is developed within a specific discourse [1993:118]. Similarly, John Keane suggests that the citizenship must be grounded within a particular context in order for it to house the memories of the past, maintain stability in the present, and generate possibilities for the future [1988:21]. However, not all political contexts are liberatory. While citizenship, conceived as a political category, can be inscribed within a liberatory feminist discourse in order to generate the possibility of resistance, to the extent that citizenship has been traditionally associated within regimes of oppression, it has been regarded with suspicion in feminist circles.

To this end, some feminist theorists have argued that liberal individualism laid the foundations for the conceptual practice of modern citizenship. According to feminist theorists like Jean Elshtain, Sara Ruddick and Carole Pateman, for example, liberal individualism formed the distinction between private and public realms and, in so doing, exiled women to the private realm of domesticity while men retained prominence in the public sphere of politics. Jean Elshtain [1980] and Sara Ruddick [1980] argue that modern citizenship is based on a masculine understanding of the citizen - as is the public that it inhabits - and defend a conception of citizenship based on female experience in the private sphere. This type of maternal thinking grounded in a female 'ethic of care' strives for a feminist politics which is based on love and friendship [Gilligan 1982]. In this context, Carole Pateman [1989] has also argued that citizenship is masculine in form and suggests that the sexual specificity of motherhood requires a 'sexually differentiated' notion of citizenship which is based on women's experience as women.

While maternal feminists are correct to point out the limitations of liberal individualism, they have threatened to turn the specificity of women's individual experiences into "a-historical universalized entities" [Dietz 1992:74]. Mary Dietz argues that the idea that mothering has the potential to generate a democratic political forum is suspicious to the extent that an ethic of care does not necessarily ensure a progressive

democratic politics. She contends that the relationship between citizens cannot be equated with the relationship between mother and child. Democratic political arrangements require the formal presence of an equal relationship between citizens, whereas the bond between mother and child can be said to be neither equal nor democratic [Dietz 1992:74]. Such essentialist readings of women's condition tend not only to reinforce the division between the public and private sphere, but also render the historical, racial, and class experiences of women's experience invisible.

Post-colonial feminist critiques of citizenship have also emerged on the grounds that the arguments advanced by western feminists often rely on the experiences of middle-class, white women. As much as citizenship may inhabit a male public sphere, third-world feminist critics like Chandra Mohanty associate practices of slavery, neo-colonialism and racism with modern citizenship [1991:15]. To the extent that the intersection of various relations of domination has given rise to the cultural and historical specificity of women's experience in the third-world, a critique of citizenship which focuses on gender - however important - is inadequate on its own. Discourses of citizenship, 'unmarked' by relations of domination, in fact represent "the construction of immigration and nationality laws, and thus of appropriate racialized, gendered citizenship [which] illustrates the continuity between relationships of colonization and white, masculinist, capitalist state rule" [Mohanty 1991:23]. For third-world feminists, citizenship represents exclusion not only on the basis of gender, but also on the basis of race, class and historical location.

For post-colonial feminists, the category of citizenship - political or not - marks the intersection of a multiplicity of relations of domination. These relations of domination inhabit the structures of everyday life, affecting the concrete practices of citizenship, and become manifest in social practices which marginalize, oppress and alienate. In order for citizenship to become liberatory then, it must be disembedded from these structures of oppression and rearticulated as part of an emancipatory political discourse. Developed within the context of a feminist politics of difference which upholds the principles of radical

democracy, citizenship can become a viable tool for social resistance. The insights of post-colonial feminists demonstrate that the practice of citizenship cannot be perceived as an end in itself, but must be developed as part of an ongoing struggle of contestation, as a part of a democratic political practice. Perceived this way, a feminist politics of difference provides the conditions for the emergence of citizenship as a significant part of that struggle .

If citizenship, based on a post-metaphysical conception of subjectivity, is inserted into the context of a multiplicity of discursive relations, how can we define it then, if it is inhabited by a series of traces? The notion of a 'differentiated citizenship' advanced by Iris Young provides one possible alternative to more conventional versions of citizenship. Her conception of a differentiated citizenship chides traditional versions of citizenship, inscribed within liberal discourse, for excluding marginalized groups and enforcing the homogeneity of citizens.⁴ For example, Young argues that the equal treatment of citizens, a mainstay of liberalism, tends to perpetuate relations of domination rather than undermine them [1989:251]. Young bases the concept of differentiated citizenship on the principle of group representation and therefore, subscribes to the idea that a "democratic public should provide effective representation of distinct voices and perspectives that are marginalized" [1989:261].

While the concept of a differentiated citizenship is an important contribution to the task of reformulating citizenship in postmodern modernity, it is problematic for a variety of reasons. As much as the concept of a differentiated citizenship is interested to undermine relations of domination, Will Kymlicka and Wayne Norman suggest that the category risks not only creating, but perpetuating hierarchies of oppression [1994:371]. The problem with hierarchies of oppression is that they tend to sediment differences without providing a means to contest them. Young's conception of a differentiated citizenship is problematic in this context because it does not contain the capacity to arbitrate between competing claims for difference. Even though Young attempts to base her formulation of differentiated

⁴ Young argues that her understanding of marginalized groups is comprised of a fluid rather than essential identity [1989:260].

citizenship on a conception of discourse ethics, the principle of impartiality cannot serve as a means of adjudicating between claims.

In *The Ideal of Impartiality and the Civic Public* (1990) Young argues that the principle of impartiality is problematic for a number of reasons. Because she suggests that the logic of impartiality does not allow for it to be applied contextually, it renders invisible the specificity of individual circumstances and situations. The objective rationality that informs the ideal of impartiality, Young suggests, contributes to the abstraction of experiences out of their specific contexts and, as a result obscures the emotions and feelings that necessarily result from any decision. Given that the ideal of impartiality is applied universally, at least in principle, Young argues that the erasure of individual experiences is a fundamental problem [1990:100]. Impartiality, therefore, contributes to institutionalizing relations of oppression to the extent that judges cannot act, she suggests, in completely impartial ways [1990:106].

Young's critique of impartiality, while advanced in order to undermine the institutionalized experiences of oppression, unfortunately contributes to the perpetuation of relations of domination to the extent that it fails to provide the necessary means to adjudicate between differences. Without a way of distinguishing between those differences that are the product of injustice and those differences that produce injustice, her conception of a differentiated citizenship risks the uncritical acceptance of difference.

To this end, Christine Sypnowich argues that Young's critique rests on "a caricature of the idea" of impartiality [1993:109]. Even as Sypnowich agrees that no one can act in completely impartial ways, she suggests that this is the very point of the ideal of impartiality - it is an ideal to which we can aspire. The existence of relations of domination in capitalist society "should cause us not to reject impartiality, but to demand it, and to point to the ways in which inequality can thus figure as part of a struggle for social justice, and our demand for impartial treatment will thus cause us to challenge the unfairness of the advantages of property and social position" [Sypnowich 1993:109]. In this context, as

Anne Phillips contends, the risks associated with Young's conception of differentiated citizenship - at least as it is presently articulated - outweigh any gains that could be derived from it [1992:90].

Given that Young's conception of differentiated citizenship is formulated in terms of 'group' identity, even if the ideal of impartiality can be recovered, this version of citizenship is not adequate for a politics of citizenship inscribed in an emancipatory feminist politics. The practical difficulties associated with determining the nature and conditions of group disadvantage are, as Kymlicka and Norman argue, in themselves enormous [1994:371]. Not only can this particular conception of differentiated citizenship generate conflict between groups, for instance, but it fails to provide a means of determining the nature of shared identity [1994:375]. The idea of a differentiated citizenship does not seem then, to be adequate to the task of transforming relations of domination in postmodern modernity.

The difficulties associated with the idea of differentiated citizenship are also indicative of those attached to the politics of citizenship. In order to determine whether a form of difference is politically abhorrent or not, we require some sort of ethical foundation which can distinguish between those differences that are either progressive or repressive. That a difference that is *politically* repugnant is not, in itself, enough to claim that it should be rejected. The decision to reject difference, or to embrace it for that matter, must rest on an ethically informed decision which is sensitive to the ideals of radical democracy. The ideal of impartiality, based on a conception of discourse ethics, provides the foundations for distinguishing between differences. A conception of citizenship then, which is grounded within this type of liberatory context makes resistance possible.

In this chapter, I have attempted to show that feminists can benefit from postmodern positionings of the subject to the extent that such analyses can be applied to current discussions about the utility of citizenship for feminist political goals. Using the work of Foucault and Derrida I have explored the implications for postmodern critiques of

the subject for citizenship. To the extent that citizenship is vested with a multiplicity of power-knowledge relations, I have attempted to demonstrate that as a discursive category, citizenship is a text which is open for interpretation. If developed within a feminist politics of difference, using the ideal of impartiality, citizenship can contribute to advancing the project of radical democracy. The discourse of citizenship, if based on a post-metaphysical conception of subjectivity, can therefore, be appropriated by feminists and used to challenge entrenched relations of domination within contemporary society.

Chapter 3

Facing the Postmodern Challenge: Rights, Plurality and Universality

Rights discourses, legacies of the emancipatory impulse of the Enlightenment, have been threatened by leading elements of postmodern theory. The postmodern critique of totality inspires a challenge to the universality of rights discourses and, therefore, calls into question the capacity of rights to contest relations of domination. Where some postmodern theorists argue that the aggrandizement of scientific rationality does violence to the multiplicity of language games, the absence of normative grounds which can arbitrate between narratives poses problems for the adjudication of rights discourses. The postmodern repudiation of metaphysical humanism could limit, if not eliminate, the subject's ability to deploy rights discourses in discursive struggle.

Although postmodernism has colonized contemporary social theory, many social theorists have avoided probing the intersection between postmodernism and rights.¹ Other theorists have begun to address the debate but have not explored it at length.² Still others have attempted to interrogate these claims and engage with postmodern critiques of modern social theory with the hope of contributing to a radical democratic politics informed by feminism - it is here where I situate myself.

The intersection between postmodernism and rights discourses is of particular interest to feminist theorists because the matter of rights has been highly contested within the feminist movement. One feature of this debate emphasizes the difficulties associated with securing some sense of gender equality under general conditions of sexual difference. While some feminists appeal to sameness in order to promote gender equality, others

¹ The paucity of literature on the subject of rights and postmodernism seems to indicate that this is indeed the case.

² See Rolando Gaete [1991]. A more recent publication [1993] examines the relationship between human rights and modernity. While Gaete offers a critique of critical reason, the source of his engagement is less specifically postmodern than this earlier publication.

suggest that these appeals render invisible essential differences which constitute women's experience. Another feature of the debate is the extent to which feminists, Carol Smart for instance, argue that rights discourses severely limit the prospects for effective social transformation [1989:158]. Moreover, others have associated rights discourses with the social imposition of eurocentric ideals as normative constructions of colonial rule [Mohanty 1991:21].

Considered the 'paradigmatic political discourse of postmodernism', feminism shares with postmodernism a concern for marginality, difference and otherness. The rights debate provides a particularly interesting opportunity to examine the nature of this conjuncture given the possibility of a theoretical coupling between feminism and postmodernism. Because rights discourses are an indispensable part of radical democratic project, I attempt to retrieve rights discourses from these challenges in order to contribute to a theory of the third way.

The postmodern critique of modernity captures the ambiguities of contemporary social theory to the extent that traditional theoretical paradigms have largely failed to generate wide-scale social change. In other words, postmodernism challenges the ways in which totalizing metanarratives have silenced emergent voices of protest. The modern humanist subject lies at the centre of this failure to fulfill the emancipatory promise of modernity. The postmodern critique of universality is deflected, however, when we consider that universality is, in fact, a historicized and contingent product of a series of power relations. The postmodern principle of incommensurability, while respecting multiplicity and diversity, fails to produce normative grounds which can arbitrate between claims - in this case rights claims. Moreover, in spite of the postmodern challenge to the humanist subject, a post-metaphysical subject capable of deploying rights discourses in discursive struggle contributes to the reformulation of the subject of rights in postmodern modernity. I proceed in the next section to provide a working definition of rights in postmodern modernity. Next, I consider the postmodern challenges advanced by Jean-

François Lyotard - my resident postmodern theorist - and examine the implications for rights discourses through the lens of Rolando Gaete - one of the few theorists who has explored the intersection between postmodernism and rights. Finally, I examine the consequences of politicizing rights discourses for the contemporary feminist movement.

I. Understanding Rights in Postmodern Modernity

Because the language of rights inhabits a particularly slippery conceptual terrain it makes the search for an adequate definition difficult. As much as rights have been embedded in a series of discursive, social and historical contexts, they have often been accorded a transcendent status which removes them from the site of their contingency. Their location in a variety of political and moral discourses has sedimented them in particular conceptual traditions, liberal individualism for example. Following Amy Bartholomew and Alan Hunt, I want to suggest that the imposition of a unitary definition of rights infringes upon the variety and diversity of potential 'rights-talk' [1991:6]. To affirm one definition of rights over another blocks the emergence of alternative forms and conceptions of rights. The idea of rights discourses, then, provides a way of talking about rights which avoids the imposition of one category of rights over another. And for this reason, this concept will be adopted here.

II. Postmodern Challenges and Rights Discourses: Lyotard and Gaete

In this section, I intend to use Jean-François Lyotard's critique of the grand narratives of legitimation as a backdrop for an examination of the ways that postmodernism bears on rights discourses. I rely on Rolando Gaete's preliminary investigation of the effects of postmodernism on rights discourses as a vehicle in order to analyze the following: first, the postmodern critique of universality and its effect, if any, on the universality of rights; second, the postmodern critique of scientific rationality and its effect on legal practice and method; and third, the postmodern critique of subjectivity and the

implications for the articulation of rights discourses. I give a disproportionate level of attention to the critique of universality not only because it provides the context for discussion to follow, but also because it constitutes one of the most troublesome challenges facing rights discourses today.

Recognizing that rights claims are not universal truths but mirror the effects of power, I suggest that their universal status is in fact, socially constructed. In postmodern modernity, the concept of universality is not rejected, but retained in a particularized form. In this vein, I argue that this historical contingency of rights discourses, sedimented over time, leads to an unlimited variety of language games and for this reason, normative foundations need to inform the range of potential language games so that rights discourses can be deployed in the hope of transforming our social condition. Situating the subject in a variety of social, historical and discursive contexts enables the construction of a post-metaphysical humanist subject, one that is imbued with critical capacities capable of strategically deploying rights discourses. Through these means, I argue that it becomes possible to retrieve rights discourses from a strong form of the postmodern critique.

One of the distinctive characteristics of postmodern theory is its consummate rejection of universal truth claims which, often coupled with a repudiation of epistemological foundations, is associated with the erasure of the sovereign subject of modernity. Jean-François Lyotard, revered as the postmodern theorist *par excellence*, gave currency to these features in his widely received treatise *The Postmodern Condition* (1984a). As much as Lyotard celebrates notions of diversity, heterogeneity and plurality in the postmodern, Steven Best and Douglas Kellner point out that he is distinct from other postmodernists in that he takes on the problem of justice - albeit with a characteristically postmodern twist - and rejects the politics of aestheticism typical of most postmodern theorists [1991:159]. While Lyotard's conception of a 'justice of multiplicities' will not be examined at length here,³ his attention to justice is nonetheless important in this discussion

³ Lyotard's notion of a 'justice of multiplicities' will be considered in Chapter 4.

to the extent that, as Jeremy Waldron suggests, political and social theorists have begun to ground their demands for justice on the foundation of rights, rather than on the basis of social utility [1987:1]. For present purposes, Lyotard's challenge to the grand narratives of modernity is important because his work has been particularly useful for those, like Rolando Gaete, who have examined the ways that the postmodern critique of universality bears on the language of rights.

While Lyotard's most explicit challenge to the universal narratives of modernity is contained in *The Postmodern Condition* (1984), his early writings provide the intellectual groundwork for his subsequent critique of the grand narratives of legitimation. The attacks on the transcendence of reason and the foundationalist claims of the Enlightenment in *Discours, figure* (1971) continue to inform an ongoing challenge to theory's desire for unity and coherence. The celebration of heterogeneity and plurality in *Economie libidinale* (1974) marks his eventual break with ideas of truth and certainty in *Lessons in Paganism* (1977). While he later admits that *Economie libidinale* was intended primarily as a rhetorical exegesis of textual form, it provides the basis for a definitive break with the tyranny of absolutes in modernity.⁴ Just as these ideas provide the cement for his conceptualization of the postmodern phenomenon, they reflect Lyotard's own disillusion with theory and the unfulfilled promise of the Enlightenment. For Lyotard, then, modernity is equated not only with the Enlightenment but also with the unifying, totalizing aspects of modern thought.

In *The Postmodern Condition*, Lyotard is concerned largely with the state of knowledge in the postmodern age. Defining postmodernism as the growing "incredulity toward metanarratives", Lyotard suggests that the climate of crisis surrounding the metaphysics of truth is consistent with challenges levelled against the grand narratives of legitimation [1984a:xxiv]. Such incredulity implies that the sanctity of the metadiscourses of emancipation, narratives of legitimation and progress, are themselves rife with anxiety

⁴ Lyotard reveals this in an interview with Jean-Loup Thébaud [1985:6].

and uncertainty. The desire for validity in the pursuit of scientific truth inextricably links knowledge and power to the processes of legitimation [1984a:6]. In modernity therefore, the language of positivism has constituted the totality of knowledge, rendering invisible the narratives which form the basis of the social bond and the actual processes of legitimation. Science, unable to legitimate its own validity, must rely on narratives which confer legitimacy upon social institutions through the play of language games [1984a:20].⁵

Language games, contests based on the classification of utterances into categories and rules of play, depend primarily on the principle of agonistics which maintains the impossibility of certainty in knowledge: "To speak is to fight, in the sense of playing, and speech acts fall in the domain of a general agonistics" [1984a:10]. Social bonds emerging from the exchange of moves in language games eventually become the foundation for social relations. Modern discourses like science, however, transcend the social bond by appealing to the language of metanarratives in order to legitimate their own validity. These grand narratives of progress and emancipation violate the heterogeneity of language games to the extent that the overriding desire for consensus can lead to universalizing truth claims. Consensus, thus tends to contradict the principle of incommensurability and "imposes homogeneous criteria and a false universality" on language games [Best and Kellner 1991:166]. In other words, the metanarratives of legitimation have inhibited critical challenges which would have otherwise emerged from contesting discourses. Inevitably, they lead to the exclusion of alternative narratives as a result of the modern desire for homogeneity, unity and coherence. Postmodern knowledge, in contrast, challenges the foundations of these grand narratives of legitimation by insisting upon the heterogeneity of multiple language games based on the principle of agonistics.

In Lyotard's postmodernity, language mediates social reality to the extent that subjects precede the formation of the social bond. Subjects are inscribed in the processes of language and are constituted by the plurality of language games. Just as language games

⁵ Lyotard's conceptualization of Language Games is borrowed from Wittgenstein.

are marked by their diversity and instability, so too are subjectivities unfixed and heterogeneous. The sovereign subject of modernity must therefore be rejected, as it is embedded in the process of "formulating the legitimacy of discourses" [1984a:34]. When Lyotard later supplants the term 'language games' with the term 'regime of phrases' in *The Differend* (1988) it is only to reinforce this rejection of the metaphysics of the subject - "it seemed to me that 'language games' implied players that made use of language like a toolbox, thus repeating the constant arrogance of Western anthropocentrism. 'Phrases' came to say that the so-called players were on the contrary situated by phrases in the universes those phrases present, 'before' any intention" [1984b:17]. Stated somewhat more explicitly in *The Differend*, Lyotard wants "[t]o refute the prejudice anchored in the reader by centuries of humanism and of 'human sciences' that there is 'man,' that there is 'language,' that the former makes use of the latter for his own ends, and that if he does not succeed in attaining these ends, it is for want of good control over language 'by means' of a 'better' language" [1988:xiii].

These insights into the various ways that subjects are constituted by language yield some of Lyotard's most important contributions to postmodern theory. It is remarkable, however, that this same acumen also marks some of the central limitations in his analysis. His emphasis on the agonistics of language, moreover, extols the virtues of multiplicity and yet, has been criticized for the absence of principles grounding normative judgments. And while his attention to the limitations of scientific knowledge is important, Lyotard's critique of the grand narratives of legitimation has left him vulnerable to criticisms of moral relativism [Benhabib 1990:121].

As Best and Kellner point out, many of these criticisms are symptomatic of the absence of an adequate theorization of modernity and postmodernity [1991:178]. Lyotard equates modernity with the Enlightenment and thus, fails to consider the various ways that aspects of modernity contest the Enlightenment. Because he equates modernity with those narratives that silence and oppress the voices of others, Lyotard challenges the optimism of

the emancipatory impulse of the Enlightenment. Postmodernity then, suggests a definitive break with modernity and becomes a reaction to the failed promise of modernity. Just as modernity appeals to metanarratives, so does postmodernity reject them. Similarly where homogeneity and coherence have been stressed in modernity, heterogeneity and plurality have become important precepts for postmodernism. In effect, as Douglas Kellner points out, Lyotard erases history by negating any continuity with the past [1990:269]. Thus for Lyotard, the postmodern is not simply a theoretical framework, but also the conjuncture of various social forces which have fundamentally transformed our social condition.

For my purposes here, however, postmodernism represents a source of theoretical engagement as opposed to an epochal transformation which signifies the onset of a new ontological condition. That said, Lyotard's conceptualization of postmodernity will be bracketed in this discussion because whether we have actually entered a postmodern condition is still open for debate, hence the importance of the idea of a postmodern modernity.

While Lyotard does not examine the problem of rights directly, his writings have significant implications for the universality of rights discourses within postmodern modernity. Rights discourses, legacies of the revolutionary urges bequeathed by the Enlightenment, and therefore recognizable as one of the grand narratives of emancipation, are susceptible to the forms of critique inspired by Lyotard. The idea that subjects are endowed with rights seems problematic in this context because rights, specifically human rights, rely on truth claims which assert the inviolability of humanity. For Lyotard, subjects are not transcendent, constituted as they are in processes of language. Moreover, the incommensurability of language games precludes the assertion of normative grounds which can arbitrate between rights claims.

These are questions posed, and yet left unanswered, by Rolando Gaete in his article *Postmodernism and Human Rights* [1991]. For Gaete, human rights are the only source of legitimation left which has yet to be exhausted within the project of modernity. To the

extent that other 'instruments of legitimation' have tended to become means of manipulation, he suggests that rights discourses have been linked to narratives of freedom, therefore subjecting rights to the 'rhetoric of power' [1991:150;154]. In postmodern modernity, "[h]uman rights do not exist as heavenly and pure principles but as a specific discourse with ambivalent rules of formation" [1991:155]. He suggests that questions which address postmodern challenges to rights are fundamentally radical, cutting to the core claims of legitimacy, emancipation and truth. If we assume that postmodernism undermines claims to certainty and to universality what then, he asks, is the nature of the relationship between human rights and universal truth? If rationality lies at the heart of legal process, what are the implications for human rights if the basis of scientific rationality is questioned by postmodernism? Moreover, what is the relationship between the subject and the power relations that invest the practice of rights? [1991:168-169].

Where Gaete's intent is merely to probe, in a preliminary way, the implications of a postmodern intersection with human rights, my intent is to interrogate these concerns, to dislodge the assumptions that inform them, and to provide a tentative response to these questions. Hence, I want to develop his line of inquiry in order to see whether it is possible to retrieve rights discourses from the postmodernism challenge. Stylizing to some extent, I examine first, the postmodern challenge to universal truth claims; second, the postmodern critique of scientific rationality; and third, the postmodern critique of subjectivity.

First, what effects do postmodern challenges to universality have on rights discourses in postmodern modernity? Rolando Gaete, clearly influenced by Lyotard's use of language games and his critique of metanarratives, suggests that "[a] 'post'modernist perspective would assume that human rights are neither the expression of a universal truth nor a denial of it and regard their truth claims as only local moves in a game the subject enters when formulating his/her relationship to power in the language of fundamental rights" [1991:168]. This reading gives a particularly sympathetic interpretation of the

effects of postmodernism on rights discourses, not only to the extent that it evades the 'end of subjectivity' critique advanced by many postmodernists - discussed below - but also because it ignores the full impact of Lyotard's critique of metanarratives on rights discourses.

I want to suggest *pace* Gaete that the implications of the postmodern critique for rights discourses is more insidious than Gaete admits. If we simply regard the articulation of rights discourses as moves in a particular language game, to what language games do we refer? The postmodern challenge to the metadiscourse of emancipation could, in fact, be undermined by the incommensurability of language games, the principle of agonistics upon which postmodern knowledge is based.⁶ Thus, the postmodern critique of universality requires a more comprehensive interrogation than the argument offered by Gaete demonstrates.

Gaete suggests that rights, predisposed to the rhetoric of power, are bound to the narratives of freedom and emancipation in modernity. Postmodernism, in contrast, reduces rights to simple moves in a language game, no longer the articulation of universal truth claims. Gaete's conceptualization of rights in both cases is rather problematic. In the first place, the discourse of power seems to bear on the deployment of rights, yet the relationship between power and rights is unclear. When Gaete refers to the 'rhetoric of power' in modernity does he mean that rights are universal truths untouched by the effects of power? Or, alternatively, does he mean that rights discourses are embedded in a series of complex and intersecting power relations, thus affecting their deployment? The view that rights are sacred and thus, inviolable is consistent with the notion that they represent a universal truth, the expression of the emancipatory impulse of the Enlightenment. Viewed this way, rights become reified concepts, disembedded from the various conditions which inform their articulation in specific social contexts. Such a perspective is problematic to the extent that, as Bartholomew and Hunt point out, "[r]ights are ultimately and continually

⁶ This is of course Lyotard's conceptualization of postmodern knowledge.

contestable and revocable. They are not inalienable, sacrosanct, or above the play of politics" [1991:32]. Rights are social and historical constructs which echo the various contradictions ever present in contemporary society. Rights discourses reflect then, not the universal truth of the Enlightenment, but rather the effects of power. But, even so, rights become sedimented in social formations over time.

In the second place, the idea that rights discourses are neither the expression nor the denial of universal truth claims - but are merely moves in a particular language game - generates two possible interpretations. If rights are reduced to the play of language, does this mean that rights discourses are neutral, and therefore impartial moves in a given language game? Or, does Gaete imply that rights discourses can be used strategically, signifying that they can be deployed in a wide range of discursive arenas? The idea that rights are neutral and therefore, impartial reflects the view that everyone regardless of social position or status has recourse to rights in equal measure. In other words, rights are equally distributed and equally available. This view of rights discourses assumes that we start from a level playing field, disregarding the power relations which invest race, class, and gender positions. In contrast, as Bartholomew and Hunt point out, rights discourses "entail a preconstituted content and form" which play a part in establishing "the terrain for subsequent social action and interaction" and thus, are neither impartial, nor neutral [1991:51].

Grounded in specific social contexts, rights discourses can be articulated as strategic moves in a particular language game. Yet, the nature of this language game is not discussed by Gaete - do rights discourses still appeal to the narratives of emancipation and freedom, or are they articulated in another context altogether? If we assume that Gaete intends to link rights discourses to the grand narratives of the Enlightenment, narratives of emancipation and legitimation, then what effect does Lyotard's critique have on the exercise of rights discourses? Bearing in mind that the principle of agonistics informs the play of language games, the priority of grand narratives must then, be defunct. One of the

difficulties surrounding this critique is whether or not Lyotard actually intends to include these narratives - formerly metanarratives - into the play of language. A generous answer would concede that yes, the logic of incommensurability requires that all language games participate equally. Such a response ignores the extent to which relations of power invest the play of language, therefore relegating the 'impartial' play of language to the domain of privilege. As much as Lyotard may wish to shield language games from the exercise of power, the idea that language games transcend the effects of power is problematic because language is, in fact, vested with a multiplicity of power relations. Alternatively, the virulent nature of Lyotard's critique of metanarratives could suggest that he intends to exclude them from the play of language games. To preclude the erstwhile narratives of legitimation from consideration - as Best and Kellner claim he does - would contradict the basic principle of incommensurability [1991:172].

This brings me back to the question of Lyotard's critique of grand narratives and its effect on the universality of rights discourses. In some respects, this question examines the extent to which the critique of metanarratives has shifted onto a more general critique of universality. Universal rights discourses have often been challenged - not only by postmodernists - on the grounds that they are entrenched in western values and reflect western ideals [Turner 1993:179]. Moreover, ostensibly grounded in a modern humanist conception of subjectivity, universal rights discourses have been challenged because they tend to ignore the various ways subjects are socially and historically constituted. These concerns are addressed by Chantal Mouffe in the following passage:

"[T]he reformulation of the democratic project in terms of radical democracy requires giving up the abstract Enlightenment universalism of an undifferentiated human nature...The new rights that are being claimed today are the expression of differences whose importance is only now being asserted, and they are no longer rights that can be universalized. Radical democracy demands that we acknowledge difference - the particular, the multiple, the heterogeneous - in effect, everything that has been excluded by the concept of Man in the abstract. Universalism is not rejected but particularized; what is needed is a new kind of articulation between the universal and the particular" [1988:36].

Mouffe shares with Lyotard a concern for diversity even though they support different intellectual projects. Just as Lyotard invokes the principle of agonistics in order to ensure the continued heterogeneity of language games, Mouffe defends the multiple and the particular as necessary for the project of radical democracy. Although they both reject Enlightenment universalism, their responses to the problem of universality are quite different. While Lyotard champions the idea of incommensurability in order to thwart universalizing impulses, Mouffe indicates that universality should be retained, yet particularized.

The opacity of Mouffe's response requires some investigation - to what extent can the principle of universality be extracted from Enlightenment universalism? How can universality be salvaged, restored in a new form articulated 'between the universal and the particular'? If we attribute to Mouffe the outright rejection of universality, then there really is little difference between the positions adopted by either Mouffe or Lyotard. A more interesting tack to pursue explores the possibility of retrieving the principle of universalism from the confines of the Enlightenment, given that the absolutism of the Enlightenment can refuse difference and diversity.

Elizabeth Grosz suggests that the principle of universality is closely related to the idea of essentialism, which signifies a 'sameness' often justified by shared conditions and common characteristics [1990:335]. The idea of universality then, seems to require a stable origin, an anchor of homogeneity: "[t]he grand narrative has therefore a fixed point of origin which has normally been enlarged into mythological dimensions and given such symbolic weight that subsequently one can only read the story *ab urbe condita* " [Heller and Fehér 1991:539]. Charges of essentialism - often manifested in a concern for difference - have been launched in an attempt to subvert appeals to sameness. For example, 'third world' feminists have challenged western feminists for employing the experiences of middle-class, white women as a means of demonstrating the universality of women's

oppression.⁷ Given the incredible diversity of women's lived experiences, these ideas of sameness fail to reflect the cultural and historical specificities of intersecting relations of domination that affect women's experiences.⁸

Social constructionists consider the idea of an essential 'woman' theoretically repugnant and argue that 'essentialist' categories actually mark the confluence of a series of intersecting discursive, historical and social forces. In this context, Diana Fuss argues that "in and of itself, essentialism is neither good nor bad, progressive or reactionary, beneficial nor dangerous" [1989:xi]. Although essentialist 'deployments' may be found guilty of disembedding conceptual categories from their various historical locations, she argues that by retaining formerly essentialist categories such as 'woman', social constructionists unintentionally re-deploy essentialist arguments. Often, the specificity attached to historical location inadvertently re-articulates essentialist reasoning into constructionist arguments couched in historicism. Fuss argues, therefore, that essentialism is not countered so much as displaced:

"[I]f essentialism is more entrenched in constructionist logic than we previously acknowledged, if indeed there is no sure way to bracket off and to contain essentialist maneuvers in anti-essentialist arguments, then we must also simultaneously acknowledge that there is no essence to essentialism, that essence as irreducible has been *constructed* to be irreducible [1989:4].

Essentialism and constructionism are then two sides of the same coin: even if we argue that every category is socially constructed - that there are no absolutes - then the very idea of social constructionism still remains plagued by essentialist rationality. Essential categories have been passively *constructed* as absolutes, as de-contextualized truths. If we characterize essentialist categories this way, then we risk constructing a definition of essentialism that is largely reactionary. Alternatively, if we define essentialism actively, as a deployment, then we can make *strategic* use of essentialist categories [Fuss 1989:20-21].

⁷ See Mohanty [1991] for an elaboration of this use of third world women.

⁸ I am referring to various relations of domination which intersect along the lines of race, gender, class and sexual preference.

Mouffe's idea then, that 'universalism is not rejected but particularized' is not as opaque as it would seem if the concept of universality is socially constructed. The idea of a particularized universality reflects the "historico-cultural contingency of value ideas born of Enlightenment" [Johnson 1994:130]. The historico-cultural contingency of universalized ideals, like rights discourses, reaffirms that idea that universality, because it is contingent, can be subject to change. Hence, the principles of freedom, autonomy and liberty which constitute the universal deployment of rights discourses respect the postmodern concern for the local and the particular, and yet, according to Johnson, "for *all of those who recognize them*, these values have come to acquire a universal status" [1994:130]. Even as rights can be strategically deployed in discursive struggle, their institutionalized status reflects the fact that they are the product of social and historical forces which have become sedimented over time.

Gaete contends that the practice of rights claims in postmodern modernity "would not rely blindly on the professional belief in the rationality of this practice but would examine it as an institutional game of *formulation* of differences" [1991:169]. In other words, the interpretation of rights discourses in legal practice would rely on the rhetorical strategies of argumentation. Legal process in postmodern modernity does not appeal to evidence in order to determine the truth of matters at hand, rather it rejects legal rationality recognizing instead that the discovery of 'truth' is dependent on the success of rhetorical strategies. As much as rights claims are the products of difference they are however, also implicated in the production of differences.

Given Gaete's allusion to institutional games, it seems fair to suggest that his antipathy toward legal rationality is founded on Lyotard's critique of the grand narratives of legitimation, narratives which form the basis for scientific knowledge in modernity. Language games in postmodern modernity appeal to the principle of agonistics in order to ensure diversity and heterogeneity of play. Strategic moves are based on the style and form of rhetorics in the play of language games. If legal method is understood to be one such

language game, then it is ruled by the principle of incommensurability in postmodern modernity. The transcendence of legal rationality, like scientific knowledge, is undermined then, by the appeal to agonistics.

Understood as one language game among many, legal practice and method provide the discursive terrain upon which rights claims can be strategically deployed. Taken to logical conclusions, however, the principle of agonistics places no limit on the possible diversity and variety of language games which abound in postmodern modernity. The language game of fascism, for instance, can exist alongside the language game of emancipation. My point is that Lyotard's principle of incommensurability fails to provide any normative grounds on which we can adjudicate between language games. By relying exclusively on rhetorics, the ability to distinguish between narratives becomes undermined in legal practice. Gaete leaves unanswered the question of how legal method can continue to adjudicate between language games if normative judgments are reduced to rhetorical differences. As much as diversity and difference are important, however, limits need to be placed on the variety and plurality of language games.

This discussion brings me to Gaete's examination of the effects of the postmodern critique of subjectivity on rights discourses. Gaete claims that "[a]part from being treated as rational principles addressed to critical citizens in the democratic *polis*, human rights must also be examined as a narrative order that places the power subject in relation to a certain political rationality" [1991:169]. The inscription of subjects in the language game of politics locates the subject in the discursive field of rights discourses. Lyotard's writings form the basis for Gaete's rejection of the sovereign subject of modernity to the extent that the unfixed subject of postmodern modernity becomes embedded in the process of formulating discursive legitimacy.

Gaete gives a particularly generous reading of Lyotard's conception of subjectivity, a reading which merely situates the subject vis-à-vis rights discourses. A less charitable, perhaps more internally consistent, reading of Lyotard in this context would suggest an

overwhelming desire to eradicate the subject altogether. Viewed this way, Lyotard's challenge to the metaphysical subject shares some similarities with Foucault's critique of Enlightenment humanism. Yet, their critiques of the sovereign subject of modernity diverge to the extent that while Foucault is interested in the production of new subjectivities, Lyotard simply dissolves the subject into the play of language [Haber 1994:6].

Seyla Benhabib's distinction between strong and weak versions of postmodern theory provides a useful way of negotiating these different interpretations of the subject in postmodern modernity [1992:214]. The strong version of postmodernism suspends the subject in signifying chains of language where subjectivities are produced by language games. Lyotard's unequivocal repudiation of metaphysical subjectivity suggests a certain compatibility with those variants of postmodernism which endorse the 'death of Man'. The weak version of postmodernism, in contrast, situates the subject "in the context of various social, linguistic and discursive practices" [1992:214].

While Lyotard has clearly influenced Gaete's understanding of postmodern modernity, it is not entirely clear whether Gaete follows Lyotard's intent to dissolve the subject in language and to endorse the strong version, or whether he intends to situate the subject and thus, advocate a weak version of postmodernism. At one point, Gaete suggests that rights discourses are "local moves in a game the subject enters" [1991:168]. This statement could be read in one of two ways. First, it could be argued that subjects are inscribed in language and constituted by the play of language games. This argument fails to recognize, however, the critical facilities necessary for the subject to deploy rights discourses strategically. The idea that subjects simply emerge out of language neglects to consider that strategy is dependent on critical engagement and self-reflection in order to be successful.⁹ Alternatively, it could be argued that radical humanist subjects, imbued with an ability for self-reflection, enter language games and use their critical capacity to negotiate various strategies and techniques of play. Such an argument recognizes that although a post-metaphysical subject is socially and historically contingent, it retains "the ideals of

humanism expressed in the ideas of a self-conscious life, authentic self-realization and autonomy in terms which disassociate all such commitments from the will and aspirations of any particular social subject" [Johnson 1994:132].

Post-metaphysical subjects, situated in the discursive field of language games, are endowed with critical capacities that enable them to deploy rights discourses. As such, radical humanism "defends the value commitments of modern humanism as historical and, hence, contingent ideals which have, nevertheless acquired an essentiality for us" [Johnson 1994:11]. Radical humanism respects the idea that universality in postmodern modernity is particularized and historicized: "[P]arallel with the aspiration to consider all humans within these universalizing terms has been the equally strong desire to affirm particularity, to raise awareness and respect for the uniqueness of all forms of individuality" [1994:viii]. This post-metaphysical humanism - situated in a variety of discursive contexts and endowed with critical capacities - enables citizens in Gaete's formulation therefore, to deploy rights discourses strategically in order to contribute to the project of radical democracy.

I have attempted to retrieve rights discourses from the postmodern challenges extended by Lyotard in this section. While Lyotard's critique of the grand narratives of legitimation challenges the universality of rights discourses, I have argued that the idea of universality actually reflects the confluence of historical and social forces, and therefore should not be rejected, but can be particularized. I have also argued that normative grounds need to be established which can adjudicate between competing rights claims. Finally, I have recovered the idea of a post-metaphysical subject endowed with a critical capacity for reason from the postmodern challenge to subjectivity, a subject which retains the ability to deploy rights discourses in discursive struggle.

III. Feminism and the Politics of Rights in Postmodern Modernity

The idea that feminism and postmodernism share a particular theoretical conjuncture has become quite popular. Politically, however, as much as it has become fashionable to

associate postmodernism with a politics of difference, postmodernism has also been accused of endorsing a form of moral relativism in some instances, or leading to political nihilism in others. In this context, feminism - as both a theoretical and political project - has often provided a political context for postmodernism. Politically, the matter of rights has occupied a central place within the feminist movement. Rights discourses have been associated with the sameness-difference debate, a contest between those feminists who argue that the same rights should be accorded to women as they are accorded to men, and those feminists who argue that different rights should be given to women on the basis of sexual difference. Other feminists have argued that rights discourses oversimplify the complex relations of domination which exist in contemporary society, and on these grounds consider rejecting them altogether [Smart 1989:144]. Extending this line of argument a little further, third-world feminists have argued that the imposition of universal rights discourses not only reflect a eurocentric bias, but tend to maintain, rather than transform, relations of colonial domination [Mohanty 1991:23].

Feminism often shares with postmodernism a critique of the unitary subject of modernity, a critique of scientific rationality and a critique of totalizing metanarratives. Where postmodernism rejects the idea of a stable coherent subject which exists independent of the social world, feminism, however, challenges the unitary subject of modernity on the grounds that the modern subject is inherently masculine. The transcendent capacity of reason, reason which facilitates the production of Truth, is acquired through the abstraction of knowledge from an objective reality. Postmodernists argue that in fact an extra-discursive reality upon which to base Truth cannot exist, hence knowledge cannot be absolute. The rationality of the Enlightenment endowed men with the capacity to reason in this argument, and relegated women to the ranks of the irrational. Where postmodernism challenges totalizing systems on the grounds that there are no absolutes, feminism specifically challenges totalizing systems of domination.

Framed in dichotomous terms, the sameness-difference debate has emerged as a struggle between those advocating strategies of sameness in order to combat gendered relations of domination, and those endorsing strategies of difference in order to subvert female oppression. The juxtaposition between sameness and difference invariably eliminates a particular element of women's experience. Where some feminists advocate strategies of sameness in order to elicit gender equality, they inadvertently conceal experiences of difference. The distinctly female experiences of difference, including pregnancy and childbirth, have become rendered invisible through strategies of sameness. Alternatively, strategies of difference have tended to give priority to gender, thereby obscuring power relations which intersect along the lines of race, class and sexual orientation. Essentializing 'woman' in this manner exposes the various degrees of exclusion associated with strategies of difference.

In postmodern modernity, however, the idea that rights discourses are themselves cemented in social, historical and discursive arenas is suggestive of the fact that strategies of sameness and of difference actually reflect specific social contexts. What the sameness-difference debate has tended to ignore is that rights discourses are not disembodied truths but always reflect multiple relations of domination. Hence, rights discourses are inherently mutable - this is what makes them so political. When deploying rights discourses feminists must be sensitive to the specificities of context and of location. Hence, feminists must critically consider the implications for deploying a specific rights strategy at a particular point, at a given time.

Secondly, the argument that rights discourses oversimplify power relations - an argument advanced by Carol Smart - also tends to neglect that rights discourses mirror the culturally specific location in which they are deployed [1991:144]. To the extent that rights discourses inhabit particular historical and discursive contexts, while they may perpetuate relations of domination - specifically gendered - it does not necessarily mean that rights discourses cannot be deployed in order to advance the claims of women and other

marginalized groups. As much as Smart may be correct to suggest caution in an over zealous deployment of rights strategies, the inherently political character of rights discourses suggests that they contain the potential to be used for progressive ends.

The critique of rights discourses posed by third-world feminists however, is a more troublesome claim to consider. As much as we acknowledge that rights discourses are historically contingent, their universalization - although particularized in postmodern modernity - could suggest a eurocentric, colonialist bias which is the product of a complex process of power relations. The question remains why have rights discourses, legacies of Enlightenment thought, and not other non-Western strategies of contestation been accorded universal status? Even if the idea of universality is socially constructed, rights strategies *still* remain the product of Western social and political thought and reflect established relations of domination. Postcolonial critiques demonstrate that the construction of universal rights is also inscribed in the production of differences. Yet, the "historico-cultural contingency" of rights discourses for "*all those who recognize them* " has constructed their universal status [Johnson 1994:30]. And as such, their imposition reflects the need to consider frequently whether the deployment of rights discourses contributes to liberation, or whether it perpetuates relations of domination.

In conclusion, this chapter marks an attempt to retrieve rights discourses from postmodern challenges to the language of democratic politics. I have attempted to demonstrate that the postmodern critique of universality does not necessarily undermine rights discourses, rather, the idea of universality is itself historically contingent, the product of a series of discursive and social contexts. In order to adjudicate between competing rights claims, I have suggested that normative grounds - examined at length in the next chapter - need to be constructed in order to limit language games which promote violence and indecency. Finally, I have argued that the idea of a post-metaphysical subject which has the critical facility for reason - capable of deploying rights discourses strategically - can be recovered from the postmodern critique. The strategic deployment of rights in specific

contexts and particular locations has the potential, therefore, to move feminists beyond the impasse of the sameness-difference debate. As much as the articulation of rights discourses could perpetuate relations of domination, I have suggested that they can, with caution, be used for progressive ends.

Chapter 4

Beyond a Postmodern Justice? Deconstruction, Ethics and Plurality

Modern conceptions of justice have traditionally served to inform moral judgement and shape human action. By challenging universal truth claims and instrumental reason, elements of postmodern theory could undermine demands for justice in postmodern modernity. Although postmodernists appeal to an ethics based on the valorization of difference and plurality, they have been reluctant - at least until recently - to take on the problem of justice. As much as postmodernists have typically expressed ambivalence towards the problem of justice, Axel Honneth observes that a shift has occurred in postmodern thinking about justice [1995:289]. Not only have postmodernists begun to challenge modern conceptions of justice, but they have developed some important alternatives to conventional understandings of justice.¹ The overall postmodern challenge to justice, according to Stephen White, "might be rendered into the mention that we are far too ready to attach the adjective 'just' to cognitive, ethical and political arrangements that are better understood as phenomena of power that oppress, neglect, marginalize and discipline others" [1991:115]. Postmodern theorists like Jean-François Lyotard and Jacques Derrida have defended versions of postmodern justice which not only expose the web of power relations rooted within modern conceptions of justice, but they also exhibit sensitivity to difference and otherness. Even though these attempts to enlarge the scope of modern conceptions of justice draw attention to the problems of injustice and diversity, they are limited - at least as they are presently articulated - because they fail to develop a firm conception of the ethical commitments that inform these conceptions of justice and, as a result, often risk performative contradictions. And given the lack of attention to

¹ See Douzinas and Warrington [1991]

evaluating contemporary social relations, these postmodern conceptions of justice are incapable of prescribing human action capable of social transformation.

While sympathetic to the project of enlarging the scope of justice, I find Lyotard and Derrida's postmodern alternatives to modern conceptions of justice problematic. I will show that Lyotard, for instance, not only articulates two versions of justice that are inconsistent with each other, but he fails to identify the necessary ethical arrangements which must inform his understanding of justice - postmodern or otherwise. Alternatively, Derrida fails to theorize the concrete ways that the 'experience of justice as aporia' might be lived if we surrender ourselves completely to the Other. As such, the abstractness of his understanding of 'justice as a giving that is never completed' risks reifying contemporary social relations. Moving beyond a postmodern version of justice, then, I attempt to recover a version of justice which not only incorporates a sensitivity to difference and injustice through discourse ethics, but also provides some normative grounds on which to base the political categories of citizenship and rights.

Postmodernist theorists claim that modern conceptions of justice have paid insufficient attention to the problem of injustice and have neglected to examine the extent to which power pervades the juridical process. Arguing that modern forms of justice have silenced emergent voices of protest, the fact that justice has not been achieved is marshalled to legitimate postmodern claims. The problem, however, with these arguments is that the alternatives tend to be highly abstract, therefore inhibiting their application in concrete social contexts. The inability to critique social relations effectively, for instance, undermines the ability to prescribe social action, and thereby neglects to consider some important contributions of modern justice.

As much as I think that respect for difference and otherness should be a vital part of any conception of justice, my sense is that postmodern alternatives - as they are presently articulated - obviate some important features of modern justice. Incorporating postmodern concerns for diversity and injustice into a conception of justice which not only evaluates

social relations, but prescribes social action should be an important element of any conception of justice. I want to caution against the uncritical acceptance of postmodern theories of justice and to suggest an alternative path - a third way - which mediates between modern and postmodern conceptions of justice. I proceed in the next section to provide a working definition of justice. Next, I consider the contributions of Lyotard and Derrida. As much as Lyotard's understanding of a justice of multiplicities represents an important contribution, Derrida's conception of justice as the experience of aporia requires a disproportionate level of attention because of the complexity of his claims. Finally, I explore the possibility of moving beyond a postmodern justice.

I. Conceptualizing Justice in Postmodern Modernity

The prospect of defining justice is complicated by the fact that the concept of justice, like citizenship and rights, is embedded within particular socio-political contexts. As David Harvey points out, given the variety of interpretations - ranging from egalitarian to positive law to utilitarian conceptions - of justice, providing a working definition of justice is bound by the terrain it inhabits. Harvey suggests that two options are available to us - either we examine these multiple and diverse conceptions of justice as processes embedded in language, or we admit the relativism inherent in discourses of justice [1993:48]. Yet, Harvey concedes too much in his rendering of justice to the extent that each option not only obviates some important contributions of modern justice, but also risks reducing justice to the domain of politics. As much as justice may coincide with the political, conceptions of citizenship and rights in postmodern modernity - themselves contested and ideological categories - require a form of justice which guides judgement and human action. An understanding of justice then, which is sympathetic to difference and injustice, should incorporate a normative code based on the principles of freedom, equality and non-coercion, that is not only capable of evaluating social relations but, can also prescribe social action. Hence, for my purposes here, the concept of justice occupies a

dual role, for it acts as a means to evaluate social relations, as well as it prescribes human action.²

II. The Problem of Justice in Postmodern Modernity: Lyotard and Derrida

In the following section, I examine two distinctly postmodern conceptions of justice articulated by Jean-François Lyotard and Jacques Derrida. Lyotard's understanding of the idea of a 'justice of multiplicity' provides an interesting point of departure because his work marks a commitment to the preservation of plurality through justice. As much as he represents an important figure in current debates about justice, his contribution is limited to the extent that he neglects to provide an adequate theorization of what ethical commitments inform his understanding of justice. Derrida's conception of 'justice as the experience of aporia', gives important insights into the ways that 'law as justice' has undermined the possibility of justice. Yet, his contribution is also limited to the extent that the ethical arrangement - the complete submission to the Other - on which his conception of justice depends is problematic. Like Lyotard, Derrida's conception of justice fails to provide an adequate mechanism not only for evaluating institutionalized relations of power, but also for prescribing transformatory social action.

Lyotard's conception of postmodern justice, based on the principles of multiplicity and difference, is committed to the maximization of the plurality of language games. Developing the link between plurality and justice, Lyotard identifies two forms of justice in an interview with Jean-Loup Thébaud in *Just Gaming* (1985). Not only does he suggest that justice can be defined as a 'multiplicity of justices' - thereby equating the desire for heterogeneous language games with an appeal to a plurality of justices - but he suggests that the notion of a 'justice of multiplicity' can preserve the incommensurability of language games. The notion of a 'multiplicity of justices' defines justice according to the rules generated by a particular language game. As such, justice "consists in working at the limits

²This definition of justice draws on Young's conception of justice. [1990:33]

of what the rules permit, in order to invent new moves, perhaps new rules and therefore new games" [1985:100]. In contrast, the idea of a 'justice of multiplicity,' prescribes a unitary conception of justice for each language game in the hope of maintaining the plurality of language games. Concerned about the extent to which justice can preserve the heterogeneity of language games, this conception of justice "prescribes the observance of the singular justice of each game such as it has just been situated: formalism of the rules and imagination in the moves" [1985:100].³

Best and Kellner suggest that Lyotard's conception of a postmodern justice - whether based on a 'justice of multiplicity' or a 'multiplicity of justices' - provides the foundation for a new postmodern politics based on plurality and marginality [1991:162]. Where justice has traditionally been concerned with evaluating institutionalized relations of domination, they suggest that Lyotard's postmodern politics provides a foundation for a new conception of justice based on the local and the particular. Lyotard shifts the modern focus on justice from a concern about evaluation and prescription to a postmodern concern for difference and the preservation of diversity through the play of language. This understanding of the relationship between justice and multiplicity is linked to the principle of agonistics, a concept which acknowledges the inherent divisions and differences within society. Thus, Lyotard's conception of justice provides the backdrop for the idea of the *différend* which, as Best and Kellner contend, is "the very principle of justice whereby all are allowed to speak and enter the terrain of social agonistics" [1991:170].

Used to characterize a conflict which has not been resolved equitably, the *différend* denounces the application of a single rule or legal convention in order to make a decision. The concept of the *différend* signifies the "case where the plaintiff is divested of the means to argue and becomes for that reason a victim" [1988:9].⁴ Representing "the unstable state and instant of language wherein something which must be able to be put into phrases

³ During the interview Jean-Loup Thébaud chastises Lyotard for "talking like the great prescriber himself" [1985:100].

⁴ References for *The Différend* refer to pages in the book as opposed to numbers in the text

cannot yet be," the *différend* accounts for the damage resulting from the inability to articulate the terms of an agreement [1988:13]. Damage represents the sense of injustice which results from the inability to prove the experience of injury derived from wrongful punishment [1988:5].

Just as Lyotard's commitment to the heterogeneity of language games contributes to the politicization of difference, so does his understanding of justice encourage otherness. The attention to difference encourages participation in the play of social agonistics. As such, Lyotard's work yields important insights into the ways that language constitutes subjects in political terms [Haber 1994:30]. However, because he neglects to define his notion of plurality, the relationship between multiplicity and justice stands to be undermined. As Stephen White contends, Lyotard fails to provide a coherent account of the various ways that plurality is, and can be, constructed [1991:134]. The idea, moreover, that two apparently related, yet opposing versions of justice can exist at one time places him in a performative contradiction - any violation requires a 'justice of multiplicity' to regulate the 'multiplicity of justices'. Such a conception of justice imposes a universal value on the agonistics of language games and thus, undermines the demand for multiplicity. Although the *différend* requires non-violent elocutions in order to mediate the play of language, some language games are inherently violent and may "entail the intrusion into another's space" [Haber 1994:32]. Thus, Lyotard is left with the problem of attempting to regulate regimes of phrases, yet has no ethical force which can inform his conception of justice beyond a respect for the multiplicity of language games.

If the force of justice traditionally exists in both evaluating social relations and prescribing social action, then Lyotard's conception of justice deviates sharply from an established terrain. Given that language games, or regimes of phrases, are metaphors for social relations, then the only means by which we can adjudicate between violence and non-violence rests on the principle of incommensurability. On its own, however, this principle does not provide us with a sufficient normative force to evaluate social relations

because Lyotard fails to develop the ethical arrangement that informs his conception of plurality. This raises a serious problem for evaluating social relations because, as Pauline Johnson observes, "[I]f we seek to 'judge without criteria' we surrender that interest in defending the justice of our claims which is necessary to the practice of social criticism" [1994:131]. The idea of a justice of multiplicity, devoid of any ethical force beyond the preservation of heterogeneity, requires some sort of philosophical ethics - like Habermas' discourse ethics - in order to bolster its claims. Discourse ethics, based on communicative action which is intersubjective by definition, presupposes the existence of an ideal speech community where individuals can articulate their interests and concerns freely where decisions are based on the force of the better argument. The ideal speech situation is grounded in democratic ideals of freedom, equality and non-coercion, and thereby prescribes a domain where constraints on communication cannot exist.⁵ As Honneth points out, Lyotard is "dependent on discourse ethics' idea that every subject must equally get the chance to articulate his or her interests unconstrainedly and that means: free from domination" [1995:297]. While it could be argued that implicit within communicative action is a commitment to truth, thereby undermining Lyotard's idea of a 'multiplicity of justices,' as Stephen White points out "[i]n communicative ethics, there is no expertise that can give one ultimate authority to say flatly that some substantive outcome of an actual discourse is just or unjust" [1991:139].

Lyotard's conception of justice then, requires a complementary ethical force in order to buttress its commitment to multiplicity and difference. Combining the principle of incommensurability with discourse ethics enables the preservation of heterogeneity without violence. While Lyotard's case for a postmodern justice is strengthened with the addition of discourse ethics, on balance his conception of justice is still inadequate given that he neglects to examine the relationship between the 'justice of multiplicity' on one hand and the 'multiplicity of justices' on the other. Moreover, despite the possible fusion between

⁵ For a discussion of communicative action see Habermas [1987].

discourse ethics and incommensurability, Lyotard's conception of plurality remains undeveloped. As such, Lyotard's version of a postmodern justice cannot be taken seriously. I turn now to consider another form of postmodern justice - Derrida's conception of justice as the experience of aporia.

In his essay, *Force of Law: The 'Mystical Foundation of Authority'* (1992) Derrida responds to criticisms challenging the idea that deconstruction is compatible with an ethical commitment to social transformation. Not only have critics claimed that deconstruction poses a threat to an ethical conception of justice, it has also been suggested that, in fact, deconstruction contributes to, rather than undermines a defence of the existing social order.⁶ Derrida's response is to suggest that while deconstruction may not seem to address the problem of justice, deconstruction is, in fact, vital for the possibility of justice [Derrida 1992:10]. Given the relationship between justice and deconstruction, the question can be recast from one that explores the extent to which deconstruction is ethical, to one which probes the features of those ethics that not only inform, but are inseparable from, deconstruction.

Derrida argues that deconstruction complicates and exposes those paradoxes which, metaphysical in character, have become embedded in logocentric thought. To the extent that law as justice has become sedimented in historical memory, deconstruction becomes "through and through a problematization of law and justice" [1992:8]. Deconstruction is located between the poles of justice and law. While law can claim legitimacy by appealing to justice, justice must continually establish itself through legal mechanisms in order for it to be enforced. By uncoupling the link between law and justice, the double movement of deconstruction ultimately finds its force in determining the possibility of a justice without bounds. The first movement insists upon preserving a sense of unlimited responsibility while dislodging the conceptual apparatus which informs our perceptions of law and justice. In other words, a deconstructive interrogation recognizes that an originary

⁶ See Benhabib [1991; 1995], McCarthy [1991] and McDonald [1990].

moment, an essential truth, an authentic limit cannot ethically exist while maintaining a responsibility without limits [1992:20]. The second movement insists upon upholding a sense of responsibility toward memory, memory consisting in the idea of the *trace* without which meaning becomes impossible. By appealing to the trace, the second movement of deconstruction ensures the displacement, rather than the elimination of meaning.

Derrida suggests that the legitimacy of legal institutions is often based on founding principles which emerge out of an originary moment or a revolutionary context. Their legality depends on an authorized and legitimate force, customarily understood as the force of justice. But because justice has become embedded within a particular horizon of meaning, he claims that we have forgotten that "the very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force" and is therefore, "always an interpretive force" [1992:13]. The law, comprised of various legal mechanisms and processes, is always subject to interpretation. Deconstruction reminds us not only that law is an interpretive body, but also that displacing the performativity of legal discourse is important. When the structure of law comes up against its limit - where the mystical foundation of authority is revealed in the form of justice - it constitutes a 'violence without ground' and must be deconstructed [1992:14]. Law, therefore, ensures the possibility of deconstruction.

The inseparability of deconstruction from justice is evident in Derrida's claim that "deconstruction is justice" [1992:15]. Deconstruction is located in the space that distinguishes law from justice. But because law requires the force of a legitimate authority which is always constructed, law can neither be just nor unjust in its originary moment. As expressions of the law, legal decisions require calculation. Justice, however, can neither be calculated nor defined. As such, the form of justice cannot be prescribed because it is through the process of definition that justice becomes collapsed into and subsumed under the law.⁷ Justice can only be understood as the experience of *aporia*. Derrida insists that

⁷ See Cornell [1992:165] for an elaboration on this point.

the idea of justice as aporia is distinct from the notion of justice as an ideal. Where an ideal signifies the aspiration to perfection by implying a potential horizon of meaning, the notion of aporia suggests an inability to reach a solution, an experience which never reaches its destination. Justice then, is only a possibility. For Derrida, there cannot be justice without the experience of aporia. Therefore, a prescribed version of justice becomes "a will, a desire, a demand for justice whose structure wouldn't be an experience of aporia [and] would have no chance to be what it is, namely, a call for justice" [1992:16].

The possibility of justice depends on the combination of three aporias: *épokhè* of the rule, the trace of the undecidable, and the urgency of justice. The first aporia, *épokhè* of the rule, affirms the importance of a fresh judgement where justice follows established rules of order, yet ensures the uniqueness of every interpretation. Because the complexities and contexts of each case are distinct, every decision requires a fundamentally different interpretation [1992:23]. Judgement, derived from suspending the rule of law, must therefore be unique. The second aporia, the trace of the undecidable, emphasizes the irreducibility of justice, the idea that justice can be neither defined nor contained in a final form. Justice as distribution is problematic in this context because, according to Cornell, it implies "an already established system of ideality in which the distribution takes place" [1992:135]. As an aporia, justice is both irreducible and infinite. The infinity of justice is reflected in the idea of justice as a gift where the possibility of justice occurs in the act of giving without reciprocity and without exchange [Derrida 1992:25]. The third aporia, the urgency of justice which obstructs the horizon of knowledge, reflects the idea that while justice requires a sense of urgency, it has not yet been realized: "Justice remains, is yet, to come, *à venir*, it has an, it is *à venir*, the very dimension of events irreducibly to come" [1992:27]. Because the possibility of justice depends on its undeconstructability, it can have no fixed horizon or limit and thus, is always a justice to come.

The experience of justice as an aporia depends on the complete submission to the Other where the idea of *différance* prevents any system from incorporating what is other to

itself. Because the establishment of a system implies a limit, a beyond, a horizon which informs the limits of exclusion, Derrida suggests that the importance of the idea of the horizon "lies precisely in its inability to make any constitutive act into an object, and in that it opens the work of objectification to infinity" [1978:100]. The non-violent relation to the Other underscores the importance of *différance* by maintaining the irreducibility of what is completely other. Yet, Derrida's conception of the ethical does not prescribe moral rules and codes, as Cornell points out, but reflects rather, an attitude, a belief toward what is other in oneself [Cornell 1995:78].

By extending the dimensions of justice beyond more traditional concerns for regulation and distribution, *The Force of Law* yields an important contribution to the interrogation of justice in postmodern modernity. As such, the idea of 'justice as aporia' enlarges the scope of justice by replacing a version of justice grounded in an instrumental rationality with one that appeals to an ethical rationality based on a non-violent relation with the Other. Reflecting a concern for difference, the 'possibility of justice' insists on the absolute resignation to the Other.⁸ Moreover, the idea that justice is a giving which is never completed reflects a broader concern with rethinking the relationship between ethics, rationality and justice in postmodern modernity.⁹

As much as deconstruction and the 'possibility of justice' contribute to an enlarged sense of justice, the focus on 'justice as aporia' seems to obviate some important features of modern justice. If the concept of justice traditionally provides us with tools capable of evaluating social relations and prescribing social action, to what extent is the idea of 'justice as aporia' capable of analyzing contemporary social relations? Derrida's understanding of justice, at least from the outset, seems too abstract to articulate a useful means of evaluating institutionalized relations of domination. Because justice, in this context, risks being abstracted out of social relations, it seems incapable of prescribing effective social action.

⁸ Cornell warns that the possibility of justice should not be reduced to "the mere tolerance of difference" because justice would then be relegated to the domain of description [1992:181].

⁹ This formulation is my own given that Derrida rejects the modern/postmodern dichotomy.

If deconstruction yields the possibility of justice, then the experience of justice as aporia must hinge on the deconstructability of law as an expression of *différance*. The primacy given to deconstruction in this equation belies the extent to which contradictions pervade Derrida's conception of *différance*. Not only does the logic of deconstruction neglect to provide adequate grounds for analyzing competing interpretations of the law, but the nature of its critique prevents the construction of other political alternatives. As Eleanor MacDonald suggests, these contradictions not only "confound any direct application to politics," but also limit deconstruction's ability to critique social relations [1990:237]. Because deconstruction seems incapable of analyzing social relations adequately - at least on its own - its capacity to bear on the possibility of justice must be examined more fully.

Since law is deconstructable and therefore subject to interpretation, then the question of how we determine better or worse interpretations of the law becomes important. Justice has traditionally served as the foundation for evaluating competing interpretations of the law. Injustice can thus be seen as the product of violating 'just' norms [White 1991:123]. In this context, appeals to justice have tended to render invisible the ways in which legal institutions continue to serve the interests of dominant forces and therefore, contribute to the marginalization of others. In order to liberate justice from the domain of power, justice must be released from the confines of the law. Therefore, the "desedimentation of the superstructures of law that both hide and reflect the political and economic interests of the dominant forces in society" must occur in order to yield to the possibility of justice [Derrida 1992:13]. In Derrida's scheme, justice remains as something that is yet to come, as the experience of aporia that can never be realized. Yet, because justice can neither be described nor calculated without violating the ethical relationship to the Other, it cannot serve as a standard for judgement - at least in the traditional sense of the term. If we accept Derrida's claim that once described, justice becomes subsumed under the law - and therefore, can no longer be justice - on what grounds do we arbitrate between competing versions of the law?

If violence occurs "when judgement is made on those who don't understand the idiom," in order to circumvent the problem of injustice, it becomes necessary to develop a means of communicating not only the nature, but the implications of judgement [Derrida 1992:18]. Terry Hoy argues that rules of competency, criteria of consensus and good faith are implicit in many of Derrida's later writings [1993:256]. Derrida, however, avoids examining these concepts. In effect, these standards become susceptible to the logic of deconstruction because they have been constructed on the basis of rational, yet contingent, social norms. Unless social norms are constructed on the basis of the complete submission to the Other, Derrida suggests that they risk preserving metaphysical social and political codes which are deconstructable. But even though deconstruction is based on the non-violent relationship with the Other, Derrida still neglects to theorize the ways by which we can live this ethical arrangement. Not only do necessary standards of evaluation continue to be undeveloped then, but so is the way in which we must surrender ourselves to the Other. In spite of Derrida's claims, therefore, deconstruction does not seem to be either "conceptually or politically rich enough to serve as the foundation for social criticism" [Benhabib 1995:118].

The inability of deconstruction to form the basis for social criticism suggests that it lacks the political resources capable of generating alternatives committed to transforming contemporary social relations. While Cornell argues that "the deconstructability of law is exactly what allows for social transformation," the idea of prescribing social action runs counter to the logic of deconstruction [1992:166]. Given that deconstruction operates as an internal critique, its logic impairs the search for political alternatives [MacDonald 1990:237]. McCarthy argues that "while it is necessary to interrogate and revise received notions of liberty, equality, justice and rights and the like, to disassemble them without reassembling them would be to rob excluded, marginalized and oppressed groups of an important resource" [1991:112]. While deconstruction delivers some important insights by dislodging metaphysical concepts from their logocentric foundations, it lacks the capacity to

create alternative political strategies. If political change rests on the creation of alternatives, to base the project of emancipation on deconstruction alone seems wholly inadequate.

If deconstruction provides neither the grounds for adjudicating between different interpretations of the law nor an alternative capable of social transformation, then the ability of justice to critique institutionalized relations of domination is called into question. While the first aporia signals the importance of the paradoxical relationship between law and the desire for justice, the idea that every interpretation can be completely unique seems to be misconceived. Derrida suggests that any decision can never be considered 'just' because, once defined, it becomes limited by the nature of its prescription. In this way, legal conventions merely defer the problem of injustice because they attempt to define rules which are themselves deconstructable. Judgement must be understood as an interpretive act in order to demand the possibility of justice [1992:23]. The effects of unequal power relations in society, however, suggest that if we must consistently interpret and reinterpret the law, it neither seems wise nor practical to base our decisions solely on a non-violent relationship with the Other.

While some legal conventions can be hostile to fundamental concepts of human dignity, this should not imply that *all* rules of law are inherently bad. As Honneth points out, the foundation of rights discourses - accorded equally and without prejudice - risks undermining this asymmetrical, non-reciprocal relationship between individuals. The idea that justice is a giving that is never completed is difficult to the extent that it erodes the nature of moral duties and responsibilities associated with rights discourses [1995:315]. Another problem with grounding our judgements this way is the extent to which standards like fairness and impartiality become obviated in the process. The complete resignation to the Other risks the uncritical acceptance of difference which, as Christine Synowich points out, may not either ensure the possibility of liberation, or of justice [1993:105]. Because principles of fairness and impartiality contain the potential to mediate between competing claims to difference, in order to live the ethical relationship with the Other this

deconstructive ethic needs to be complemented by another kind of ethical rationality based on communicative action.

The notion that justice can neither be calculated nor defined, understood as a giving that never ends, reflects a non-rational approach to interpreting demands for justice. The apparent repudiation of rationality, ethical or not, parallels Jane Flax's call for a "justice without rationality" [1992:201]. For Flax, the demand for a non-rational justice emerges from the discovery that grounding justice in objective truth claims tends to marginalize Others. For Derrida, the call for a justice without rationality emerges from a recognition of the extent to which the experience of justice as aporia has been mediated by the force of law. The failure to discriminate between rationalities, however, displaces what should be their target - instrumental rationality - onto a critique of rationality *in toto*. The effect is to conflate a critique of instrumental rationality with rationality in general, thereby refusing the possibility of an ethical rationality. In order to respect the non-violent relation with the Other, deconstruction must appeal to some sort of ethical rationality in order for social relations to be just. An ethical rationality, modelled on the basis of Habermas' communicative rationality for instance, has the potential to arbitrate between competing interpretations and marginalized voices. In Derrida's case, an ethical rationality can be used to supplement the non-violent relation to the Other so that it becomes possible to live this ethical relationship in everyday life.

Derrida's interpretation of the 'gift' - a much debated concept in social theory since Mauss introduced the concept in the early twentieth century - is unorthodox given his rejection of the idea of reciprocity traditionally accorded to the concept. In this context, the combination of the non-violent relation with the Other and an ethical rationality based on communicative action bears on the concept of justice as 'gift' in important ways. On its own, the idea of justice as a giving that is never completed seems to obscure, if not eliminate, the possibility of an intersubjective dialogue between giver and recipient to the extent that the gift carries with it the implication of unilateral action but, ignores the natur

of its reciprocity in social relations. If deconstruction reveals - and by implication rejects - the notion of calculation implicit within the idea of law as justice, then our ability to determine needs is limited. Because Derrida's conception of the gift is too abstract to allow us to determine the range of potential gifts, he ignores the importance of dialogue between parties. By suggesting that it is incumbent on others to assert their needs, he risks perpetuating relations of domination by absolving the giver of the responsibility to give. Even though Cornell suggests that "[d]econstruction uncovers this obligation as an obligation, rather than as a paternalistic response to our failure to speak in *their* discourse," Derrida nevertheless fails to theorize the ways in which others can assert their needs in order for giving to occur [Cornell 1991:115]. The idea that giving is based on the non-violent relation to the Other in this context does not mitigate the fact that giving is a social process embedded in a series of entrenched relations of domination. Hence, even if we completely surrender ourselves to the other, for many marginalized individuals and groups it is impossible to give freely without calculation. The idea that we can give without strings attached has the effect of abstracting individual actions and choices out of the wide variety of cultural, historical and social contexts which constitute them. Coupled with a discourse ethics based on communicative action, however, Derrida's conception of justice as a giving that never ends gains some currency. If citizens could articulate their interests and needs freely without coercion, then it becomes possible to mediate the social factors which constitute difference.

As a signifier for social relations then, Derrida's concept of the gift challenges a notion of justice based on the rational distribution of social goods. The distributive concept of justice is replaced with an irreducible notion of justice based on a giving which is not reciprocal but is infinite in its character. This idea of justice as a gift reflects the ethical commitment to the Other once again. Cornell suggests that Derrida's concept of the gift exposes the notion of obligation inherent within an understanding of justice based on instrumental rationality [Cornell 1991:115]. Obligation implies a prescribed form of

giving. Once defined, a definite horizon of meaning becomes constructed, and therefore violates the ethical relationship with the Other by failing to respect the terms of its surrender. Justice then, can no longer be considered 'just' because the idea of justice is "irreducible in its affirmative character, in its demand of a gift without exchange, without circulation, without recognition or gratitude, without economic circularity, without calculation and without rules, without reason and without rationality" [Derrida 1992:25].

As much as Derrida identifies some important limitations of a distributive version of justice, his critique of the concept of distribution as a prescribed notion of ideality is insufficient on its own. A critique of distribution must consider, as Iris Young points out, that a distributive conception of justice cannot extend beyond concrete material goods without difficulty, because it risks reifying social relations [1990:27]. Inquiries about justice, she claims "must consider the context and causes of actual distributions in order to make normative judgements about institutional rules and regulations" [1990:30]. Derrida's critique of distributive justice, then, rests on the claim that distribution inevitably defines a particular horizon of meaning. What Derrida neglects to consider is the extent to which distribution does not necessarily imply a preimposed system of ideality, but can represent the process of articulation where individuals express their interests and needs in a non-coercive environment. He seems to conflate a conception of distributive justice which relies on established rules and criteria, with one that identifies the needs of individuals through the *process* of distribution. As Young points out, an understanding of justice as a process shifts the focus from formal distribution to the articulation of needs and interests within an ideal speech environment [1990:34].

As a prescriptive for social action, therefore, this conception of justice raises more questions than it answers. If the gift acts as a metaphor for social relations then the idea of justice as process of giving becomes subject to the logic of deconstruction. A tension clearly exists between the ability of the gift to prescribe social action and the experience of justice as an aporia. The allegory of the gift seems to superimpose a particular horizon of

meaning on the idea of justice as aporia, thus equating justice with the action of giving. If justice is understood as 'a giving which is never completed', then the experience of aporia becomes circumscribed by the metaphor of the gift. The experience of justice as aporia, can never fully avoid prescription.

Even though Derrida and Lyotard provide important insights to theorizing justice in postmodern modernity, they do not give us sufficient means to both evaluate human relations and prescribe social action. The attention given to difference and to injustice - while characteristic of postmodern theory in general - requires another kind of ethical arrangement in order to reinforce their claims. Moving beyond a postmodern justice depends then, on developing the theory of the third way.

IV. Beyond a Postmodern Justice? Citizenship and Rights in Postmodern Modernity

Implicit within the postmodern conceptions of justice examined here, is a deep suspicion of the ways in which modern notions of justice have been incapable of generating social transformation. As such, a marked pessimism inhabits their conceptions of justice to the extent that justice, especially in the case of Derrida, resists representation and hence, prescription. The unwillingness to define or describe justice - evident in Lyotard's lack of theorizing the notion of a 'justice of multiplicity' - reflects a negative conception of justice which, in effect, inhibits liberation. Hence, the idea that we can never realize justice, as the idea of justice as the experience of aporia seems to imply, suggests an overall sense of failure and defeat. In a discussion of Derrida, Eleanor MacDonald identifies that "[w]hat is frightening in his depiction of the experience of futility is his confirmation of it, his portrayal of powerlessness as a truthful account of the human condition, rather than as contingent to particular historical and alterable circumstances" [1990:241].¹⁰

¹⁰ MacDonald refers to deconstruction specifically here, yet Derrida's claim that 'deconstruction is justice' suggests that it is suitable to incorporate her comments in this discussion of Derrida's understanding of justice

While Derrida would reject any conception of justice as an ideal - charging it with prescribing an established form of ideality - I want to suggest that justice exists not only as an outcome, but also as both a process and a state that can be negotiated. Derrida forgets that as much as justice is a normative concept grounded in notions of equality and freedom, to limit the scope of justice to something that can never be experienced is in itself problematic. For, as Flax suggests "[j]ustice is not a finite state or set of rules instituted once and for all. It is an ongoing process in which our very idea of what we are trying to achieve will change over time" [1992:200]. While it could be argued that this conception of justice represents a modified version of postmodern relativism, I want to suggest that a version of justice grounded in intersubjectivity resists the temptation toward relativism. A concept of justice based then, on the free articulation and negotiation of needs in an ideal speech community marks the transition from a focus on outcome to one on process.

The idea of justice as both a process and an always historically specific and contingent outcome depends then, on an active conception of both citizenship and rights. And because they are political categories, capable of being deployed in a wide variety of discursive arenas, they are important features of contestation. Yet, in order for an active conception of citizenship - and by implication rights discourses - to be meaningful, as John Shotter points out, they must be developed within an emancipatory discourse [1993:118]. This conception of justice, grounded in a discourse ethics based on the ideal speech community, provides the normative force on which categories of citizenship and rights can be grounded. Hence, active citizens capable of deploying rights discourses strategically negotiate their terms on the terrain of justice.¹¹

What this conception of justice underscores is the extent to which "[p]olitics is related to, but distinct from both issues of justice and ethics" [Benhabib 1991:1221]. If we argue that everything is political in postmodern modernity - thereby including justice as a category of contestation - then we have no way in which to distinguish between competing

¹¹ See Honneth [1995]; McCarthy [1991]; White [1987; 1991] for an elaboration of the relationship between justice and discourse ethics

versions of the law. The idea that everything is political not only risks reifying social relations to the extent that we overlook the intersubjective character of politics, but it undermines the specificity of concrete social and historical struggles. While the tools that make justice possible, citizenship and rights, may themselves be political categories, justice remains as a normative force that continues to guide judgement and human action.

A conception of justice based on discourse ethics respects postmodern concerns for difference and injustice. Depending on the principles of equality, freedom and reciprocity, the ideal speech community enables communication through non-coercion and by so doing, respects otherness. By participating in a communicative environment which is free and equal, this form of interpretive justice respects difference without uncritical acceptance. Experiences of injustice, effects of institutionalized relations of domination, are blunted to the extent that individuals are able to articulate their interests and needs in a non-coercive environment. A form of justice, based on discourse ethics, is able to provide the means by which just relations can occur, and through this process points the way to liberation.

In conclusion, this chapter marks an attempt to move beyond the postmodern conceptions of justice articulated by Lyotard and Derrida. As much as they identify some significant limitations of modern justice - lack of attention to difference and the problem of injustice - their alternatives remain undeveloped and thus, cannot provide the adequate means to challenge relations of domination. I have argued that a conception of justice which is based on discourse ethic's understanding of the ideal speech community enables us to retain these insights, while providing a means of transforming unequal relations of power through the idea of justice as both a process and an outcome. Justice, then, serves as a foundation for grounding the political categories of rights and citizenship to the extent that they can be deployed in the name of justice.

Conclusion

The ambivalent nature of the new constellation, characterized by the intersection between modern feminism and postmodern theory, provides the conditions capable of reformulating the categories of citizenship, rights and justice in postmodern modernity. That this ambivalence can be productive is demonstrated through the use of a weak form of postmodernism in order to dislodge some of the problematic assumptions embedded within traditional conceptions in the sociology of law. Where strong versions of postmodernism, characterized by the critique of Enlightenment humanism, the challenge to universality and the critique of reason, stand to undermine the modern conceptions of citizenship, justice and rights, a weak version of postmodernism, marshalled here for the purposes of contributing to the theory of the third way, contributes to their reformulation. To this end, a version of citizenship, based on a post-metaphysical conception of subjectivity, benefits from a weak interpretation of Foucault and Derrida's contribution. Just as this version of citizenship acknowledges that it is produced through disciplinary practices, the idea that power can be productive enables the production of new subjectivities which have the capacity for resistance. The idea that citizenship is constituted by a series of traces suggests that it changes and evolves over time, and because it is political, it becomes open for contestation. Where the strong postmodern challenge to totalizing metanarratives implies the end of universal rights discourses, a weak version suggests that if universality is understood to be both historically and culturally contingent then, universal rights discourses can be reinterpreted in a particularized form. The strategic deployment of rights discourses relies on the critical capacities - self-reflexivity, self-realization and autonomy - extant in the radical humanist subject in order to resist the effects of relations of domination.

Postmodern attempts to extend the dimensions of justice, while drawing attention to the ways that modern conceptions of justice neglect to consider the problems of difference

and injustice, fail to develop the ethical foundations on which a conception of justice must be based. Just as Lyotard risks a performative contradiction because of his failure to distinguish between a justice of multiplicity on one hand, and a multiplicity of justices on the other hand, Derrida's conception of justice as an aporia, as a giving that never ends, neither has the capacity to evaluate social relations nor, to prescribe human action. But, if coupled with a conception of discourse ethics based on communicative action, a conception of justice that moves beyond postmodernism contributes to developing a theory of the third way. Such a conception of justice provides the normative context capable of informing the strategic deployment of citizenship and rights in postmodern modernity. The idea that citizenship and rights are political in this context entrenches a continued commitment to fostering difference, critically conceived, in radical democracy.

What the idea of the new constellation emphasizes therefore, is that where modern and postmodern forms of critique converge, they can contribute in productive ways to reformulating key components of the project of modernity.

By responding to a perceived lacunae in both law and democratic politics, this thesis has attempted to engage with postmodern debates in order to contribute productively to reformulating these concepts in postmodern modernity. The intersection between feminism and postmodernism in this project shows that while feminism has often been marginalized within critical social theory, it provides an important political context for postmodern theory. The suggestion that feminism is social criticism hopes to ameliorate this blight to the extent that for any social theory to be critical it must not only incorporate, but be comprised of, a commitment to challenging relations of domination, whether they be based on gender, race, class or ethnicity. This is one of the lessons of postmodernism.

This project points to the necessity of a continued engagement with feminism and postmodernism in order to develop a theory of third way that relies on a conception of discourse ethics. But for the meantime, a sustained examination of the ways in which discourse ethics bears on the categories of citizenship, rights and justice in postmodern

modernity extends beyond the bounds of this particular project. What this thesis points to, then, is a continued interrogation of the ways justice can be served in radical democracy. The task of grounding these theoretical concerns in the actual complexities and contradictions of our current social condition must therefore be considered.

The importance of coupling these theoretical insights with the actual social condition of our times should not imply that social theory is either unnecessary or undesirable. As Peter Beilharz argues:

"[T]he proposition that social theory is dead or in crisis thus has its sting, but only and especially when it is aimed at the verbose and bloated claims of some of the grander theories. We need social theory now, perhaps more than ever before, for it demands of us also that we clarify our norms and values, our politics and our ethics. It is a way of operating in the world, a way of respecting its complexity and that of theory. These are some of the reasons why we do social theory" [1991:10].

To the extent that social practices do not themselves compel self-reflection, the continued critique of social relations by social theory is of fundamental importance. We need to ensure that the sustained interrogation of social practices continues in order to thwart the forces of domination. The idea, therefore, that a strong version of postmodernism has rendered social theory impotent by the extremity of its critique seems misplaced, given that in more measured ways, postmodern theory can contribute in productive ways to generating better and more sophisticated social theory.

References

- Alcoff, Linda
1988 "Cultural Feminism Versus Poststructuralism: The Identity Crisis in Feminist Theory" *Signs* 13(3):405-36.
- Alcoff, Linda and Elizabeth Potter (eds.)
1993 *Feminist Epistemologies*. London: Routledge.
- Alejandro, Roberto
1993 *Hermeneutics, Citizenship, and the Public Sphere*. Albany: State University of New York Press.
- Arnason, Johann
1990 "The Theory of Modernity and The Problematic of Democracy" *Thesis Eleven* 26:20-45.
- Balibar, Etienne
1991 "Citizen Subject" in Eduardo Cadava, Peter Connor and Jean-Luc Nancy (eds.) *Who Comes After the Subject?* London: Routledge, 33-57.
- Bartholomew, Amy and Alan Hunt
1991 "What's Wrong With Rights?" *Law and Inequality* 9(1):1-58.
- Benhabib, Seyla
1990 "Epistemologies of Postmodernism: A Rejoinder to Jean-François Lyotard" in Linda J. Nicholson (ed.) *Feminism/Postmodernism*. London: Routledge, 107-30.
- Benhabib, Seyla
1991 "Some Comments on Deconstruction, Justice and the Ethical Relationship" *Cardozo Law Review* 13:1219-1221.
- Benhabib, Seyla
1992 *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*. London: Routledge.
- Benhabib, Seyla
1995 "Subjectivity, Historiography, and Politics: Reflections on the Feminism/Postmodernism Exchange" in Linda J. Nicholson (ed.) *Feminist Contentions: A Philosophical Exchange*. London: Routledge, 107-125.
- Beilharz, Peter
1991 "Introduction" in Peter Beilharz (ed.) *Social Theory: A Guide to Central Thinkers*. Sydney: Allen & Unwin, 1-12.
- Berman, Marshall
1982 *All that Is Solid Melts Into Air: The Experience of Modernity*. New York: Penguin Books.
- Bernstein, Richard J.
1991 *The New Constellation: The Ethical-Political Horizons of Modernity/Postmodernity*. Cambridge, Ma.: MIT Press.

Best, Steven and Douglas Kellner

1991 *Postmodern Theory: Critical Interrogations*. New York: The Guilford Press.

Castoriadis, Cornelius

1991 *Philosophy, Politics, Autonomy: Essays in Political Philosophy*. Oxford: Oxford University Press.

Clarke, Paul Barry

1994 *Citizenship*. London: Pluto Press.

Cohen, Jean L. and Andrew Arato

1994 *Civil Society and Political Theory*. Cambridge, Ma.: MIT Press.

Cornell, Drucilla

1991 *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law*. London: Routledge.

Cornell, Drucilla

1992 *The Philosophy of the Limit*. London: Routledge.

Cornell, Drucilla

1995 "What is Ethical Feminism?" in Linda J. Nicholson (ed.) *Feminist Contentions: A Philosophical Exchange*. London: Routledge, 75-106.

Derrida, Jacques

1969 "The Ends of Man" *Philosophy and Phenomenological Research* 30:31-57.

Derrida, Jacques

1976 *Of Grammatology* (trans. Gayatri Spivak). Baltimore: Johns Hopkins University Press.

Derrida, Jacques

1978 "Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas" in *Writing and Difference* (trans. Alan Bass). Chicago: Chicago University Press, 78-121.

Derrida, Jacques

1981 *Positions* (trans. Alan Bass). Chicago: Chicago University Press.

Derrida, Jacques

1992 "Force of Law: The 'Mystical Foundation of Authority'" (trans. Mary Quaintance) in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds.) *Deconstruction and the Possibility of Justice*. London: Routledge, 3-67.

Dews, Peter

1987 *Logics of Disintegration: Post-Structuralist Thought and the Claims of Critical Theory*. London: Verso.

Dietz, Mary

1992 "Context is All: Feminism and Theories of Citizenship" in Chantal Mouffe (ed.) *Dimensions of Radical Democracy: Pluralism, Citizenship, Community*. London: Verso, 63-85.

Douzinias, Costas and Ronnie Warrington

1991 "A Well-Founded Fear of Justice': Law and Ethics in Postmodernity" *Law and Critique* 2(2):115-147.

During, Simon

1987 "Postmodernism or Post-Colonialism Today" *Textual Practice* 1:32-47.

Eagleton, Terry

1993 "Deconstruction and Human Rights" in Barbara Johnson (ed.) *Freedom and Interpretation: The Oxford Amnesty Lectures 1992*. New York: Basic Books, 121-145.

Elshtain, Jean Bethke

1980 *Public Man, Private Woman*. Princeton: Princeton University Press.

Flax, Jane

1990 "Postmodernism and Gender Relations in Feminist Theory" in Linda J. Nicholson (ed.) *Feminism/Postmodernism*. London: Routledge, 39-62.

Flax, Jane

1992 "Beyond Equality: Gender, Justice and Difference" in U. G. Bock and Susan James (eds.) *Beyond Equality and Difference: Citizens up, Feminist Politics and Female Subjectivity*. London: Routledge, 193-210.

Foucault, Michel

1973 *The Order of Things: An Archaeology of the Human Sciences*. New York: Vintage Books.

Foucault, Michel

1978 *The History of Sexuality: An Introduction, Volume I* (trans. Robert Hurley). New York: Vintage Books.

Foucault, Michel

1979 *Discipline and Punish: The Birth of the Prison* (trans. Alan Sheridan). New York: Vintage Books.

Foucault, Michel

1980 *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (ed. Colin Gordon). New York: Pantheon Books.

Fuss, Diana

1989 *Essentially Speaking: Feminism, Nature and Difference*. London: Routledge.

Gaete, Rolando

1991 "Postmodernism and Human Rights: Some Insidious Questions" *Law and Critique* 2(2):149-70.

Gaete, Rolando

1993 *Human Rights and the Limits of Critical Reason*. Brookfield: Dartmouth.

Gilligan, Carol

1982 *In a Different Voice: Psychological Theory and Women's Development*. Cambridge, Ma.: Harvard University Press.

Grosz, Elizabeth

- 1990 "A Note on Essentialism and Difference" in Sneja Gunew (ed.) *Feminist Knowledge: Critique and Construct*. London: Routledge, 332-44.

Haber, Honi Fern

- 1994 *Beyond Postmodern Politics: Lyotard, Rorty, Foucault*. London: Routledge.

Habermas, Jürgen

- 1981 "Modernity versus Postmodernity" *New German Critique* 22:3-14.

Habermas, Jürgen

- 1987 *The Theory of Communicative Action, Vol. II.; Lifeworld and System: A Critique of Functionalist Reason* (trans. Thomas McCarthy). Boston: Beacon Press.

Hall, Stuart and David Held

- 1989 "Citizens and Citizenship" in Stuart Hall and Martin Jacques (eds.) *New Times: The Changing Face of Politics in the 1990s*. London: Lawrence & Wishart, 173-88.

Harvey, David

- 1989 *The Condition of Postmodernity*. Oxford: Blackwell Publishers.

Harvey, David

- 1993 "Class Relations, Social Justice and the Politics of Difference" in Michael Keith and Steve Pile (eds.) *Place and the Politics of Identity*. London: Routledge, 41-66.

Hekman, Susan J.

- 1990 *Gender and Knowledge: Elements of a Postmodern Feminism*. Boston: Northeastern University Press.

Heller, Agnes and Ferenc Fehér

- 1991 *The Grandeur and Twilight of Radical Universalism*. New Brunswick: Transaction Publishers.

Honneth, Axel

- 1995 "The Other of Justice: Habermas and the Ethical Challenge of Postmodernism" in Stephen K. White (ed.) *The Cambridge Companion to Habermas*. Cambridge: Cambridge University Press, 289-323.

Horkheimer, Max and Theodor W. Adorno

- 1972 *Dialectic of Enlightenment* (trans. John Cumming). New York: Herder & Herder.

Hoy, Terry

- 1993 "Derrida: Postmodernism and Political Theory" *Philosophy and Social Criticism* 19(3/4):243-260.

Hunt, Alan

- 1978 *The Sociological Movement in Law*. London: MacMillan.

Jameson, Frederic

- 1994 *Postmodernism, or, the Cultural Logic of Late Capitalism*. Durham: Duke University Press.

Johnson, Pauline

1994 *Feminism as Radical Humanism*. Boulder, Co.: Westview Press.

Keane, John

1988 *Democracy and Civil Society*. London: Verso.

Kellner, Douglas

1990 "The Postmodern Turn: Positions, Problems and Prospects" in George Ritzer (ed.) *Frontiers of Social Theory: The New Synthesis*. New York: Columbia University Press, 255-86.

Kipnis, Laura

1988 "Feminism: The Political Conscience of Postmodernism?" in Andrew Ross (ed.) *Universal Abandon? The Politics of Postmodernism*. Minneapolis: University of Minnesota Press, 149-66.

Kymlicka, Will and Wayne Norman

1994 "Return of the Citizen: A Survey of Recent Work on Citizenship Theory" *Ethics* 104:352-81.

Lash, Scott

1990 *Sociology of Postmodernism*. London: Routledge.

Leca, Jean

1992 "Questions on Citizenship" in Chantal Mouffe (ed.) *Dimensions of Radical Democracy: Pluralism, Citizenship and Community*. London: Verso, 17-32.

Lefort, Claude

1988 *Democracy and Political Theory* (trans. David Macey). New York: Polity Press.

Lyotard, Jean-François

1984a *The Postmodern Condition: A Report on Knowledge* (trans. Geoff Bennington and Brian Massumi). Minneapolis: University of Minnesota Press.

Lyotard, Jean-François

1984b "Interview" *Diacritics* 14(3):16-21.

Lyotard, Jean-François

1985 *Just Gaming* (trans. Wlad Godzich). Minneapolis: University of Minnesota Press.

Lyotard, Jean-François

1988 *The Differend: Phrases in Dispute* (trans. Georges Van Den Abbeele). Minneapolis: University of Minnesota Press.

MacDonald, Eleanor

1990 "Derrida and the Politics of Interpretation" in Ralph Miliband, Leo Panitch and John Seville (eds.) *The Socialist Register*. London: Merlin Press, 228-243.

MacDonald, Eleanor

1991a *The Political Limitations of Postmodernism*. Ph.D. Dissertation. York University. Department of Political Science.

2 OF 2

PM-1 3½"x4" PHOTOGRAPHIC MICROCOPY TARGET
NBS 1010a ANSI/ISO #2 EQUIVALENT

PRECISIONSM RESOLUTION TARGETS

MacDonald, Eleanor

- 1991b "The Trouble With Subjects: Feminism, Marxism and the Questions of Poststructuralism" *Studies in Political Economy* 35:43-71.

Marshall, T.H.

- 1964 *Class, Citizenship and Social Development*. New York: Doubleday.

McCarthy, Thomas

- 1991 "The Politics of the Ineffable: Derrida's Deconstructionism" in Thomas McCarthy (ed.) *Ideas and Illusions: On Reconstruction and Deconstruction in Contemporary Critical Theory*. Cambridge, Ma.: MIT Press, 96-119.

McClure, Kirstie

- 1992 "On the Subject of Rights: Pluralism, Plurality and Political Identity" in Chantal Mouffe (ed.) *Dimensions of Radical Democracy: Pluralism, Citizenship and Community*. London: Verso, 108-27.

McRobbie, Angela

- 1993 "Feminism, Postmodernism and the Real Me" *Theory, Culture & Society* 10: 127-42.

Mohanty, Chandra Talpade

- 1991 "Cartographies of Struggle" in C.T. Mohanty, Ann Russo, Lourdes Torres (eds.) *Third World Women and The Politics of Feminism*. Bloomington: Indiana University Press, 1-47.

Mouffe, Chantal

- 1988 "Radical Democracy: Modern or Postmodern?" in Andrew Ross (ed.) *Universal Abandon: The Politics of Postmodernism*. Minneapolis: University of Minnesota Press, 31-45.

Mouffe, Chantal

- 1992 "Democratic Politics Today" in Chantal Mouffe (ed.) *Dimensions of Radical Democracy: Pluralism, Citizenship and Community*. London: Verso, 1-14.

Mouffe, Chantal (ed.)

- 1992 *Dimensions of Radical Democracy: Pluralism, Citizenship and Community*. London: Verso.

Nicholson, Linda J.

- 1992 "On the Postmodern Barricades: Feminism, Politics and Theory" in Steven Seidman and David E. Wagner (eds.) *Postmodernism and Social Theory*. Cambridge, Ma.: Blackwell Publishers, 82-100.

Norris, Christopher

- 1987 *Derrida*. Cambridge, Ma.: Harvard University Press.

Pateman, Carole

- 1989 *The Disorder of Woman: Democracy, Feminism and Political Theory*. Cambridge, UK: Polity Press.

Phillips, Anne

- 1992 "Democracy and Difference: Some Problems for Feminist Theory" *Political Quarterly* 63:79-90.

Poster, Mark

1989 *Critical Theory and Poststructuralism: In Search of a Context*. Ithaca: Cornell University Press.

Ruddick, Sara

1980 "Maternal Thinking" *Feminist Studies* 2(6):342-67.

Shklar, Judith

1989 "Giving Injustice Its Due" *The Yale Law Journal* 98:1135-51.

Shotter, John

1993 "Psychology and Citizenship: Identity and Belonging" in Bryan S. Turner (ed.) *Citizenship and Social Theory*. London: SAGE Publications, 115-38.

Simons, Jon

1995 *Foucault & The Political*. London: Routledge.

Smart, Barry

1990 "Modernity, Postmodernity and the Present" in Bryan S. Turner (ed.) *Theories of Modernity and Postmodernity*. London: SAGE Publications, 14-30.

Smart, Carol

1989 *Feminism and the Power of Law*. London: Routledge.

Smith, Dorothy E.

1990 *Texts, Facts, and Femininity: Exploring the Relations of Ruling*. London: Routledge.

Stephano, Christine di

1988 "Dilemmas of Difference: Feminism, Modernity, and Postmodernism" in Linda J. Nicholson (ed.) *Feminism/Postmodernism*. London: Routledge, 63-82.

Sypnowich, Christine

1993 "Some Disquiet about 'Difference'" *Praxis International* 13(2):99-112.

Turner, Bryan S.

1990 "Periodization and Politics in the Postmodern" in Bryan S. Turner (ed.) *Theories of Modernity and Postmodernity*. London: SAGE Publications, 1-13.

Turner, Bryan S.

1993 "Outline of the Theory of Human Rights" in Bryan S. Turner (ed.) *Citizenship and Social Theory*. London: SAGE Publications, 162-90.

Turner, Bryan S.

1994 "Postmodern Culture/Modern Citizens" in Bart van Steenbergen (ed.) *The Condition of Citizenship*. London: SAGE Publications, 153-68.

van Steenbergen, Bart

1994 "The Condition of Citizenship: An Introduction" in Bart van Steenbergen (ed.) *The Condition of Citizenship*. London: SAGE Publications, 1-9.

Wagner, Peter

1994 *A Sociology of Modernity: Liberty and Discipline*. London: Routledge.

Waldron, Jeremy (ed.)

1987 *'Nonsense Upon Stilts': Bentham, Burke and Marx on the Rights of Man.*
London: Methuen.

Warnke, Georgia

1993 "Feminism and Hermeneutics" *Hypatia* 8(1): 81-98.

Wexler, Philip

1990 "Citizenship in the Semiotic Society" in Bryan S. Turner (ed.) *Theories of Modernity and Postmodernity*. London: SAGE Publications, 164-75.

White, Stephen K.

1991 *Political Theory and Postmodernism*. Cambridge: Cambridge University Press.

White, Stephen K.

1987 "Justice and the Postmodern Problematic" *Praxis International* 7(3/4):306-319.

Woodiwiss, Anthony

1993 *Postmodernity USA: The Crisis of Social Modernism in Postwar America*.
London: SAGE Publications.

Young, Iris Marion

1990 *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press.

Young, Iris Marion

1989 "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship"
Ethics 99:250-74.

END

0 6-0 6-9|6

FIN