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**"Thinking the Presence of the Present":
Critical Reflections on Subjectivity, the Law, and the Politics of Group Rights
(Illustrated through a Case Study of the Campaign to Recognise Multiracial Identity
in America)**

by

Robert Webber

Submitted in partial fulfillment of the requirements for the degree of Doctor of
Philosophy

at

Dalhousie University
Halifax, Nova Scotia
April 1999

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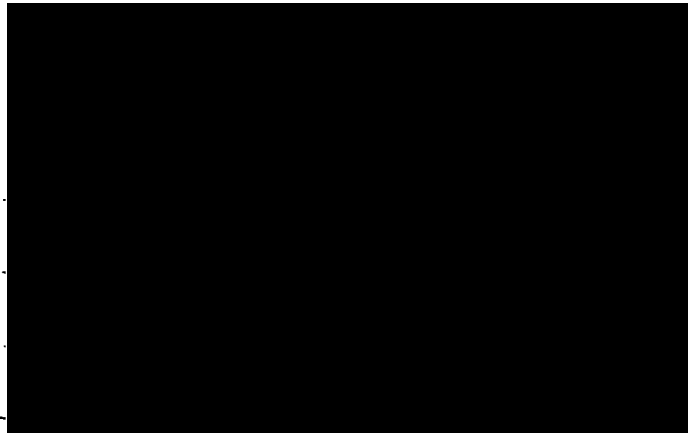
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For my parents, Bob and Barbara

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Abstract

Foucault argues that there is no outside to power. Lacan argues that the Real constitutes a permanent site of resistance. Exploring how the philosophy of Jacques Derrida negotiates a way through the tension between these two positions in order to provide an account of critical agency which avoids returning to more metaphysical accounts of subjectivity provides a point of intervention for a thesis whose case study is ultimately more empirical in that focuses on the politics of multiracial identity in America. The justification for combining an empirical case study with such fundamentally philosophical questions comes from Derrida as well, and especially from his suggestion - the one with which I open the thesis - that there is always a danger in intellectual work of either simply "thinking the present" in which we merely focus on what is present-at-hand, or of exploring the question of "presencing" simply as a philosophical mediation. In both cases, he argues, we fail to pose the truly critical question, which is how the present comes into presence. As I argue in part one of this thesis, it is because the present can only be presenced through the kind of "non-decisive repudiations" which Derrida explores in his reading of the word 'différance' that we can in fact negotiate the positions set out by Foucault and Lacan and identify the possibility of a permanent site of resistance within the exercise of power itself.

Thus, my case study is able to explore the demand made by many multiracial Americans for their own racial category on the 2000 US census not simply as something which is happening in "the present" but as a site where this present in fact comes into presence. In this respect, the "politics" of multiracial identity in America refers to the tension between resistance and repudiation which accompanies the moment of critical agency which multiracial Americans exercise in making this demand. As we shall see, while they resist the existing terms of racial inclusion in America, through a reading of how multiracial Americans and interracial families were represented during this campaign in the mainstream American press I also explore how this resistance simultaneously works to reproduce other dominant images of American identity. In particular, I show how the recognition of multiracial identity in America has depended on the repudiation of their sexuality by multiracial Americans who are either gay or lesbian.

As I argue in the conclusion, it is because repudiation is internal to the possibility of critical agency that the kind of political resistance performed by new political identities such as multiracial Americans shows that although it is possible to transcend any given context of power relations it is never possible to transcend the exercise of power itself. In between I attempt to relate the question of presencing to the question of the present by exploring two areas which foreground the case study. These are the relationship between the law and representation and the question of group identity and group rights as they are articulated in liberal political theory. As I argue here, while it is the inability to finally represent the law *as such* which ensures that new political identities will always appear as sites of resistance, the demand by liberal theories of group rights that they represent an "authentic" subject ensures that this resistance will be inseparable from a moment of repudiation. The significance of this account of critical agency is that the victim never finally gets to speak, and its implication for both the law and liberal theory is something which I return to - with a *passing* thought.

Abbreviations

Association of Multiethnic Americans (AMEA)

Project RACE (Reclassify all Children Equally)

Office of Management and Budget (OMB)

National Association of Black Social Workers (NABSW)

National Association for the Advancement of Coloured People (NAACP)

Defence of Marriage Act (DOMA)

INTRODUCTION

CHAPTER 1

"THINKING THE PRESENCE OF THE PRESENT": DERRIDA AND CRITICAL STRATEGY

In an interview in 1994 the philosopher Jacques Derrida found himself faced with a question which attempted to make a distinction between two types of philosopher: "philosophers of the present" and "philosophers who think their time."¹ As Derrida suggested, this distinction might lead in two equally unfortunate directions: either a philosopher may simply concern himself with the present, "with what presents itself at the present moment," without bothering to ask those more critical questions about what allows the present to appear in its presence, or he or she may focus on the way in which presence is made-present as a philosophical meditation without paying the slightest attention to what is going on around them in the world. As he suggests to his interviewer, "Like anyone else who tries to be a philosopher, I do not want to give up either on the present or on thinking the presence of the present."² The point to which Derrida was attempting to gesture here was, I think, that a philosopher who thinks his time must be concerned with how the present is "made-present" as a possibility in thought, so that the philosophical meditation on the question of presence is never divorced from the politics of the present moment. The task which Derrida therefore sets out for the philosopher is to always think the possibility of present, to show what must (or must not) take place, or what has (not) taken place or is (not) taking place, for the present to be thought as presence.

In the context of the interview this point is pertinent because Derrida is asked to relate himself to the present, and so the point of his apparently indirect response therefore turns out to be the absolutely crucial one that, indeed, the present must first be thought, which is to say that it must be made an "object" in thought. The interviewer's question therefore made the perhaps dangerous presumption that the present could ever be present as presence without the task of thinking, so that a philosopher like Derrida might be able to simply fit himself into it. Instead, as Derrida shows, the way in which a philosopher relates himself to anything can only be through the task of thinking its presence. In this way, the critical agency of the philosopher lies with the possibility of thinking, for it is when the present is understood as what is simply present-at-hand that thinking is displaced by theory and agency is lost. It is therefore the way in which thinking provides critical distance from the present and allows it to be grasped in the way of its coming to presence that Derrida's response is intended to keep in focus.

For Derrida, like Heidegger who also shared this concern, thinking has therefore focused on the question of the possibility of Being. However, as both point out, in the history of Western philosophy from Plato onwards the possibility of Being has traditionally been revealed in the thought of metaphysics.³ Within this, and in contrast to thinking, Being has traditionally been thought to be present in what is present-at-hand. This is because Being is that which is thought to be present in beings-as-a-whole. Which is to say that each particular being has a character of Being which it shares with all other beings and which therefore allows it to come into presence and be revealed in its being. Thus, Being is thought as the horizon of universal presence within which particular beings find their own beingness. Heidegger called this the ontological difference and argued that the thought which gives this difference, which contains in it the possibility of posing the question of the meaning of Being, had been lost or forgotten in Western philosophy and by Western philosophers in favour of the type of thinking which accompanies the ontic difference, or the way in which particular beings differed from

each other in their relationship to Being. The task of thinking the possibility of Being which Heidegger signaled in Being and Time, and which Derrida has taken up and continued in his own reflections on both Heidegger⁴ and metaphysics, therefore signals an attempt to reverse the movement of Western critical thought which, because it has generally concentrated on the ontic difference, has subordinated thinking to theory, a term which in this case I use to refer to the attempt made by both liberals and radicals in the Marxist tradition to explain why particular beings differ in their relationship to Being.

In metaphysics the question of Being as it relates to beings-as-a-whole has always been resolved in the identity of a being which has been thought to hold the property of being a universal type of being. It is then this property which allows it to serve as the site of Being and to allow particular beings to come into presence, which is to carry the possibility of their own self-presence in what they exhibit when they are seen as present-at-hand. Thus, although several sites of Being have been identified in Western thought including God, Man, Reason and Speech, it has been their claim to represent self-presence which has allowed them to secure the self-certainty of particular beings in their relationship to other beings.⁵ That is to say, because Being is thought by metaphysics to be present in all beings in the same way, each being is then able to know the world *as such* and thus orientate him or herself within it. In other words, the possibility of Being is directly related to the possibility of knowing, so that it is Being which allows individual beings to overcome their finite knowledge of themselves by providing the horizon of other similar beings within which they can appear and recognise themselves.⁶

However, the reason why the question of Being has been forgotten in the history of Western philosophy, Heidegger and Derrida argue, is that Being cannot ground its own possibility, which is to say that it cannot bring itself into presence. Thus, as both show, Being in fact turns out to be a particular kind of being which only appears in its presence by referring to something else, some other particular being, which it is not. In other words, it is this need to refer to another being which shows that Being is in fact a site of

being. In Heidegger's case, this realisation leads him to argue for the ontic priority in the determination of the ontological difference, which is to say that it is only in our everyday relations with particular beings that our Being comes into presence. Heidegger adopts several terms to delineate this situation, which he describes as fundamental ontology, including dwelling, gathering, and of course thinking. For a being who reflects upon the possibility of his own Being, Heidegger suggests that this must lead to a concern or respect for other beings, since it only through first of all Being-with other beings that the "here" of this being, which Heidegger appropriately calls Dasein since he now associates the Being of all beings with always already Being-there, can be made-present in its Being. For a being who reflects upon the question of its own Being, therefore, it is only when it is gathered together with other beings that it gains a sense of the Being behind its own being. In fact, it is not with other beings that Dasein gathers, but rather with figures which, like itself, are only what Heidegger calls "things." That is to say, they have the quality of things in the sense that they remain outside of presence until, by appearing together, they obtain their sense of Being and thus the possibility of their particular beingness. Heidegger's point, of course, is that Being is actually inseparable from being, that the "here" cannot finally be divorced from the "there." That is to say, the being which is "here" finds its possibility-of-Being in Being-there. The horizon of self-knowing, therefore, does not appear in the figure of a universal being but rather in the shifting contexts of the everyday world. It is for this reason that Heidegger argues that Being should in fact refer to Being-in-the-world and that the analysis of Being must therefore follow the movement from onticality to ontology and not the reverse as metaphysics has presupposed. Consequently, it is because a being who reflects upon the possibility of its own Being comes to understand this possibility in terms of Being-there that Heidegger argues that the structure of Being is not in fact metaphysical but instead phenomenological, which is to say that our Being does not appear *as such* but rather *as something* and therefore in a relationship of Being-towards....

Whereas Heidegger takes his examples from everyday situations such as a craftsman using a hammer or the geo-physical context of a bridge, Derrida usually takes his examples from the texts of Western philosophy, politics or literature, places where the ontological difference has also been unreflectively put to work. Thus, in perhaps his most famous "deconstruction" (which I would describe as the attempt to return the present to the moment when its possibility as presence can be thought) Derrida looks at the way in which Speech turns out not to be grounded in its own Being but in the particular being of writing, something from which it appears to differ but which in fact turns out to confirm speech's own finite relationship to self-presence.⁷ Derrida's point here, which is really quite simple, is that speech (now returned to the lower case) does not reflect thought more directly than writing as philosophers since Plato have tried to assert, but that it too gathers the meaning together through the articulation of differences. In this sense speech becomes another form of writing since it puts to work a certain practice of inscription. Thus, to speak is to already be involved in a form of writing, so that writing is in fact a much more generalised activity than simply the supplement to a bad memory.⁸ The point here, then, is that as a site of Being speech is in fact sent out from its singular relationship to writing, so that it cannot escape the trace of writing within its own possibility. As this shows, there is in fact a non-resolvable dialectic in the centre or heart of Being, one where the possibility of Being turns out to be the impossibility of Being *as such*.

In one of his early essays, Derrida illustrates this through a reading of the word *differance*.⁹ It is because in French the word *differance* takes the same phonetic form as the word *difference* that Derrida is able to show not only that is speech carries the trace of writing, but also that because of this the centre of the word is not marked by Being as self-presence but instead by a moment of undecidability, one in which the centre is only constituted by referring to something else which it paradoxically both is and is not. In other words, the word *differance* is only able to constitute itself in its Being by referring

to the word difference, a word from which it both differs but with which it remains identical. The point here is that there is no final guarantee - no centre - which will ensure that the word sent out by the speaker as difference will not be received by the hearer as difference. Thus, it is because speech cannot directly represent the thought of difference in words without the risk that it will not be received as difference that Derrida's reading of difference confirms that writing must persist in speech. As the play of the "a" on the "e" at the moment of translation from sender to receiver suggests, like speech and writing the relationship between difference and difference is therefore one of "non-identical sameness." As difference therefore confirms, the word is a dangerous supplement to speech which subverts its claim to provide a site for Being as self-presence.

The importance of difference for Derrida, then, is that it provides a strategy for reading other words and thus for bringing into question across metaphysics in general the claim to self-presence upon which the possibility of Being is secured. It is because it differs within itself, and thus turns the deferral of meaning from simply a temporal delay into an original condition, that difference is not itself a word but instead an experience (what Foucault would have called a 'limit-experience') which marks the historicity of all words; that is, an experience which marks the meaning of all words - their relationship to Being as a self-present meaning - with historicity. In other words, through his reading of difference Derrida is able to argue that both identity and difference are always at work at the heart of the word so that its point of original reference, which we see here is suspended between difference and difference, remains undecidable. It is this undecidability of any word, name, or phrase which provides a continuous theme which, as we shall see, links together Derrida's early work on the grammatical limitations of metaphysics with his later work on ethics, politics, and the law.

Thus, if the task of philosophy is to involve the attempt to think the possibility of Being from within metaphysical ways of revealing Being, then metaphysics is something which must be constantly kept in view when undertaking, in other more specific contexts

such as the case study of this thesis, the type of existential analysis which Derrida and Heidegger undertake in their attempt to open up the present to the possibility of its coming into presence. As Derrida suggests in one of his most important and well known essays, "The quality and fecundity of a discourse are perhaps measured by the critical rigor with which this relation to the history of metaphysics and to inherited concepts is thought. Here it is a question both of a critical relation to the language of the social sciences and a critical responsibility of the discourse itself."¹⁰ The important point which I want to stress here is that this suggests a fundamentally different approach to critical theory from that offered by metaphysics, one in which liberalism and Marxism enlarge their use of the critical resources which they draw from metaphysics and ask how it is that their own epistemological structure can be thought. In other words, where liberal and Marxist theory has come to be associated with the reduction of the question of Being to the ontic difference, that is, with speculation on why some beings differ from other beings in their relationship to Being, Derrida follows Heidegger in opening up the ontological difference so that the question of the meaning of Being can again be posed. Enlarging our use of reason therefore highlights the limits placed upon liberal and Marxist theory by its relationship to metaphysics.¹¹

As his deconstruction of speech suggests, in this idea of critical theory thinking is recovered from within theory to indicate the same moment of "rupture" that he finds in metaphysics in general. With the recovery of thinking as a kind of critical Being-in-the-world, the task of critical theory then becomes the attempt to always think this moment, one which Derrida refers to as the "structurality of the structure." This is the point at which the reference to a particular type of being which centres the structure can no longer remain unthought.¹² Thus, where liberal and Marxist theory are metaphysical structures which are centred upon a particular being whose particularity has to remain unthought if their critical authority is to remain legitimate, the task of thinking the structurality of the structure then announces the end of metaphysics from within

metaphysics itself. As Derrida himself has suggested: "There is no sense in doing without the concepts of metaphysics in order to shake metaphysics. We have no language - no syntax and no lexicon - which is foreign to this history."¹³

As a result, Derrida suggests that in order to develop this awareness we should not stop reading metaphysical discourses, but rather that we should be looking to read them in a different way. As he puts it, "What I want to emphasise is simply that the passage beyond philosophy does not consist in turning the page of philosophy (which usually amounts to philosophising badly), but in continuing to read philosophers *in a certain way*."¹⁴ That is to say, we need to start to submit more of them to the same type of critical interrogation to which Derrida has submitted the idea that speech is a transparent representation of thought and that writing is just an aid to recording speech. Here it was the trace of writing in speech which meant that its structure could no longer remain unthought. The goal of Derrida's kind of critical thinking is therefore to discover and follow the trace as the thought which must return the centre to the possibility of its coming to presence. Critical thinking is therefore the thinking of the trace: to think critically is to think the trace as pure possibility of thinking itself. On this point Derrida is worth quoting as well:

Such a radicalisation of the *thought of the trace* (a *thought* because it escapes binarism and makes binarism possible on the basis of nothing), would be fruitful not only in the deconstruction of logocentrism, but in a kind of reflection exercised more positively in different fields, at different levels of writing in general, at the point of articulation of writing in the current sense and of the trace in general.¹⁵

It is here in "the thought of the trace" that Derrida therefore signals both a return to thinking and his critical strategy. Indeed, they are equivalent, since a return to thinking - the radicalisation of the trace as that which brings any representational structure into presence - represents a critical strategy towards theory, and in particular to the way in

which metaphysics constitutes the possibility of theorising through the presupposition that thought is always grounded in a problematic.¹⁶

What Derrida's critical strategy therefore seeks to deconstruct is what I want to call the "narrative historicity of theory," in particular, the way in which liberal and Marxist theory operates with what he elsewhere calls the performative force which is exercised when a singular thought is projected as a universal idea.¹⁷ Theorising does this by limiting the field within which concepts can be essentially contested, and it does so by naming a 'problem' which then serves as the field within which the possibility of meaning can be contained; one where the use of force or power is forgotten, and that certain closure which the term ideology has always served to denote installed.¹⁸

In contrast, the challenge which Derrida provides us with is to "always already" be thinking the conditions under which theory can appear and the experiential field of the problem constituted. Like the particular being which in metaphysics grounds the possibility of Being, the conclusions offered through theoretical speculation are therefore always singular, and the problem serves to supplement this lack by closing a field within which they can be thought with respect to a certain universality. Derrida's critical strategy thus extends the terrain of politicisation, and does so by taking us to the point where the question of Being must no longer be posed if the problem is to be experienced in metaphysical terms; which is also a point where liberalism and Marxism must appear to occupy a space beyond narrative. Within this moment, their theoretical speculations would then appear to merely respond to the problem rather than constitute it as their own possibility from within their own criteriology. In exposing the performative force which underlies this moment, Derrida therefore takes us to the point where the distinction between narrative and theory, theory and the problem, and the problem and politics collapses.

It is, therefore, because theory always emerges from within the structure of narrative and because narrative in its turn is always a singular interpretation of something

more multivocal, that Derrida argues that there is no privileged site of deconstruction.¹⁹ As a result, the critical distance from the political which theory has always represented within liberalism and Marxism can no longer rely upon the identification of an exoteric aporia, that is to say, a contradiction or antinomy which is grounded in a transcendental (moral) imperative and therefore wholly outside an existing structure of power, and through which it is possible to negate and reverse the truth which power puts in place.²⁰ Under this framework, where theory could always be opposed to narrative, this interpretive opposition always offered that reassuring certainty in which narrative concealed truth within power and theory then recovered truth. Here the concept of ideology served to maintain the distinction between truth and power, and the role of critical theory was to recover the truth which ideology had repressed.

The critique of ideology could therefore always be made since it could identify a neutral place from which to speak. This point is crucial to both metaphysics as ontology and to humanism as the moral discourse which is grounded upon its presuppositions. Western radical thought in the Kantian-Marxist tradition has therefore asserted that there is always a point of critical distance from which theory could speak, one which transcended the question of power and location. Its truth was therefore thought to be disembodied and total. As a result, the aporia which authorised deconstruction could always be assumed to be external, or exoteric, to any prevailing structure of power. In other words, it was able to maintain that there is a privileged point of deconstruction through which a critical distance could be maintained between truth and power, and from which false consciousness could be revealed.

However, because theory always emerges from within a narrative, and therefore not from within a neutral space of moral universalism, Derrida argues that there is no privileged site of deconstruction. There is therefore no moment at which theory can escape its singularity. As a result, truth is not opposed to power. Rather, truth always emerges as power from within the narration of theory. The aporia with which Derrida is

concerned is therefore the one which is internal, not external, to the relationship between truth and power. Against this history of the reintegration and reappropriation of the non-same, Derrida suggests that "the antinomy here better deserves the name of aporia insofar as it is neither an 'apparent or illusory' antinomy, nor a dialectisable contradiction in the Hegelian or Marxist sense, nor even a 'transcendental illusion in a dialectic of the Kantian type', but instead an interminable experience."²¹ Consequently, Derrida's work suggests that critical distance can only be found inside and not outside any existing power structures.²²

Therefore, for Derrida critical thinking cannot bring about the end of politics by situating truth outside power, but it can extend the process of politicisation infinitely by showing how the assumption that truth and power are opposed has served to limit the field within which politics can be thought. To assume otherwise creates a moment of closure on the political in which a structure of self-identical sameness always prevails: either truth is reduced to power and power becomes a total structure which defines the field of truth, or else power is reconciled with truth and truth becomes a total structure within which power no longer operates. As a result, always recovering the aporia, that basic tension between theory and narrative (or truth and power) which is irreducible, is central to Derrida's critical strategy since it recovers the possibility of a critical distance which is neither true or false but merely the opening to political transformation - which is therefore the transformation of the political.

It is therefore a mistake to think of Derrida's work in terms of being a theory or even a method.²³ Instead it is a way of thinking which takes its point of departure not from outside the metaphysical tradition, but rather from within the full rigor of metaphysics, especially when the latter poses its most basic question: What is the possibility of Being? Here, Derrida's response is to show that the possibility of Being can only be thought from within the conditions which are also its own impossibility, even when this notion of Being refers to such apparently universal concepts as the political

subject or the law. As we saw earlier, thinking critically about the possibility of Being cannot be based upon a theory of what is taking place in the present. This leads the question of Being to be lost along the ontic difference and thinking to be limited to the terrain of the problem. Instead, it must be based on an analysis of how everyday questions of onticality provide the space from which Being is sent out. At this point, as we saw above, the difference between Being and beings collapses and the possibility of thinking the (im)possibility of the present opens up. As Derrida suggests, "distinctions are threatened in their very principle, and, in truth, they remain impracticable as soon as one admits that an ultimate possibility is nothing other than the possibility of an impossibility."²⁴

Because of this a Derridean politics seeks to affirm the key term to which his earlier examinations of the trace (such as the trace of writing in speech and the trace of difference in difference) gestures: the figure of the undecidable. As he suggests in his more recent discussion of the law: "The undecidable remains caught, lodged, at least as a ghost - but an essential ghost - in every decision. Its ghostliness deconstructs from within any assurance of presence, any certitude or any supposed criteriology that would assure us of the justice of a decision, in truth of the very event of a decision."²⁵ In Derrida's discussion of the law, passing through the undecidable in making a legal decision is the only possibility of justice because it is the undecidable which must be repudiated by the decision, while in his work on ethics a "non-passive endurance" of undecidability is the condition for responsibility.²⁶ For Derrida, therefore, the measure of ethical conduct is to be found in the positive affirmation of the undecidable even at the moment when this is suspended by the decision, where this decision is not simply a legal decision but rather any act of representation which closes the openness to other possibilities for identification (which is an openness to the other as pure possibility) found in the thought of the trace. The grounds for judgment therefore turn out to be based on a positive affirmation of the fact that the ground to which judgment refers is itself groundless.²⁷ As

Derrida suggests: "Perhaps it is for this reason that justice, insofar as it is not only a juridical or political concept, opens up for l'avenir [the future] the transformation, the recasting or refounding of law and politics."²⁸

As a result of this, Derrida's critical project can be characterised as the commitment to always reconstitute the aporia from within totalitarian structures of sameness, since it is the aporia as the figure of the impossible which is the possibility of positively affirming the undecidable. Where the same becomes totalitarian by appearing as self-identical, Derrida therefore always seeks to recover the non-identical from within discourses of the same. The self-identical same is therefore another expression for what we have already come to know of as the closure of theory around the field of the problem, the centering of the structure upon a particular being, the installing of the singular thought as a universal idea, the performative use of the putatively descriptive enunciation, or the logic of presupposition. Of course, it also refers to the idea of the law as right and to the subject who is self-present.

As such, the discourse of the same is also implicated within the metaphysical understanding of Being and within what Derrida therefore understands by violence, since it is the particular being which is always substituted by metaphysics to ground Being which in fact turns Being into a site of violence: a violent appropriation coupled with a violent displacement, the same thing that we get if we presume that differance refers simply and solely to differance and not to that play of differences which is the possibility of substitution (and therefore Being) itself. As he has noted in his essay on the work of Levinas: "Incapable of respecting Being and meaning in the other, phenomenology and ontology would be philosophies of violence. Through them, the entire philosophical tradition, in its meaning and at bottom, would make common cause with oppression and with the totalitarianism of the same... To see and to know, to have and to will, unfold only within the oppressive and luminous identity of the same."²⁹

Within this, the sameness which is non-identical is recovered by Derrida not as the opposite of the same, which as its absolute negation would merely reinscribe the possibility of the same by providing a horizon - a problem - around which its appearance can be closed, but rather as the presence "of an irreducible double inclusion," which subverts the possibility of determinately opposing the same and the non-same.³⁰ It thereby indicates that which must remain unthought in order for more metaphysically orientated critics to construct a theory of politics around such oppositions. Once again this leads us back to the question of the problem and its constitutive relationship with theory, and so to recall the point that Derrida's work focuses on strategic thinking in which the basic question remains metaphysical, though at its limits: How can we think the possibility of the centre, presence, the totality, etc., when the margin or absence is always already presupposed in this discourse and therefore the impossibility of this possibility?

The aporia and the undecidable therefore attempt to highlight the ethico-political implications of Derrida's concept of iteration, which is to say the implication that every concept, every moral discourse, or every political institution cannot escape the representational structure of difference which at the same time marks its possibility and institutes its return to thinking. That is to say, for Derrida iteration takes place because the present is only made-present from within a system of differences, so that when the context of presencing which presences the present is changed, when, that is, the system of differences is rearranged, what is represented as the present is altered. Therefore, iteration has ethico-political implications because every articulation of difference (which will of course also be an articulation of difference) shows that what is present in presence is in fact fundamentally undecidable. The ethico-political focus then becomes the force through which difference presences the present at the moment of articulation. As Derrida has suggested, "Anterior to the possibility of violence in the current and derivative sense...there is, as the space of the arche-writing, the violence of difference, of

classification, and of the system of appellations."³¹ Against this, iterability represents "the birth date that "only happens by effacing itself"...that is, the conditions of possibility as conditions of impossibility."³² Therefore, from an ethico-political standpoint (and Derrida maintains that there is no other) iteration suggests that even within the reassuring field of what is present in difference we remain responsible for affirming that this assurance is at the same time deconstructed by the force which gave it presence.

As a result of this, the positive affirmation of undecidability requires a different understanding of duty than that found within the liberal tradition. Here duty is resolved within the reduction of subjectivity to the rights which exist for a self-present individual. In contrast, when it responds to the undecidable duty denotes the moment at which this individual exceeds its field of ethico-political differences and thus experiences, in Derrida's term, a "double contradictory imperative,"³³ which then turns duty into an "over-duty" to the other who is presupposed in these differences but who must remain unthought if the modern individual is to constitute the ontological referent which centres the moral problematic of liberal theory. The principle of subjectivity is therefore essentially contestable because the political subject does not begin in an original relationship to self-presence. Instead, because it is reproduced from within a relationship to the other which is marked by both identity and difference (which is to say, a non-identical sameness) it is in the first moment both made-present and at the same time made-absent.

Derrida's point is, therefore, that confining our understanding of subjectivity to what is present in presence is not an adequate grounds upon which to interpret such questions as justice and responsibility. However, this should not be taken to suggest that Derrida's position is fatalistic. As he has suggested: "That justice exceeds law and calculation, that the unrepresentable exceeds the determinable cannot and should not serve as an alibi for staying out of juridico-political battles, within an institution or a state or between institutions or states of others."³⁴ In this respect, a major critical challenge is to

try to gesture towards that which exceeds the law at the moment when it structures the field of the political through the representation of its subject, and to therefore gesture towards that which remains unthought so that the subject can be present before the law.

As Derrida puts this in one of his more lengthy ruminations:

[W]e must reconsider in its totality the metaphysico-anthropocentric axiomatic that dominates, in the West, the thought of just and unjust...a deconstructionist approach to the boundaries that institute the human subject as the measure of the just and the unjust, does not necessarily lead to injustice, nor to the effacement of an opposition between just and unjust but may, in the name of a demand more insatiable than justice, lead to a reinterpretation of the whole apparatus of boundaries within which a history and a culture have been able to confine their criteriology.³⁵

Within this, by remaining within the logic of metaphysics but taking it to the point where metaphysical concepts like self-presence encounter their aporias, we can see that the radical tradition's commitment to the critique of ideology and the ideal of emancipation still remain at work within Derrida's critical strategy. As he has noted: "Nothing seems to me less outdated today than the classical emancipatory ideal...But beyond these identified territories of juridico-politicisation on the grand scale...other areas must constantly be opened up that at first can seem like secondary or marginal areas."³⁶ I think the point here is that when the other can only be represented through a moment of essentialisation, ideology extends into and operates on all those sites of marginality which appear to be uncontested within the everyday use of language. The wider point here is that all subject positions are essentially contestable because they originate not in a transparent relationship between presence and what is present, but are in their first moment reproduced from within a structure of both identity and difference. Any articulated self or other is therefore ideological in that it attempts to project a field of differences over a subject whose centre remains undecidable.

To the extent that emancipation can be opposed to ideology, therefore, it refers to the emancipation of alternative possibilities for identification which are walled up within

the norms of subjectivity found in everyday discourse. The point, of course, is not to then install alternative norms as a true ideology, but to show that every identification with a subject position itself originates in its own moment of excess, that, in Heideggerian terms, a subject can only be in its Being by being at the same time the being which it is not. As Derrida suggests, instead of providing an alibi for staying out of politics, it should be this moment of excess which politics should always be attempting to affirm. To do this, however, requires us to always respond positively to our finite relationship to knowing; to be critically aware that the terms through which we constitute our knowledge problematic emerge from within our cultural understanding of marginality, and to do so by becoming aware of those repudiated sites of otherness which remain invisible within this understanding. As Derrida puts this in his discussion of the historicity of legal decisions: "In short, for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case....Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely."³⁷ To take any other position would, I think, represent what Derrida would understand by that other radical idea, false consciousness.

To the extent that our finite relationship to knowing ought to lead us to question our authority to speak as a subject, Derrida's critique of self-presence brings into view what has been termed the politics of location. To understand this more fully, we might briefly consider two examples. These are drawn from two areas where the attempt has been made to think through the authority of a subject to speak in the name of the other and they concern the experience of the feminist critic and the postcolonial writer.

To understand the problem of location faced by the feminist critic one point of intervention is to consider the case of the Western feminist writer who writes about women in non-Western societies. In a manner which seems to gesture towards Derrida's

concern about the way in which metaphysics displaces thinking with theoretical presuppositions, Aihwa Ong suggests that the irony of Western feminism is that it establishes its own right to speak within the West on the backs of Third World women, so that the differences which mark Western and non-Western women are used to justify the claims of feminists for inclusion within Western institutions based on rationality and individualism.³⁸ That is to say, when Western feminists attempt to write for Third World women there is an irreducible trace of their own subordinate location within the West, one for which their discourse on Third World women serves as an indirect strategy of liberation. Ong notes: "These self-validating exercises affirm our feminist subjectivity while denying those of non-Western women."³⁹

The consequence of this is that Western feminists authorise their own political claims by identifying all non-Western women as traditional and in need of modernisation, as opposed to Western women who are in step with modernity. As I have just noted, the result of this essentialisation of non-Western women as traditional and Western women as modern is that Western women are then able to contest differences within the signifier "Western," whereas non-Western women remain identical and interchangeable with each other. (One dangerous consequence of privileging the location in which difference might be contested is that cultural constructions of identity and difference which take place within the essentialised and therefore uncontested discourse of the non-Western woman remain unthought. This is a particularly significant issue in the context of recent debates over feet binding, sati, and clitorrectomy.)

This metaphysical approach to non-Western women therefore sets up the singular experience of Western women as the norm within which they are brought within a system of knowing. As such, this norm is also normalising and therefore disciplinary in that it ignores the specific locality of Third World women and thus the inherent contestability of the word "non-western women." In particular, it overlooks the alternative representational practices which take place locally and the political possibilities which

might emerge from them. As Ong notes, in Western feminism "There is a scientific tendency to treat gender and sexuality as categories that are measurable, and to ignore indigenous meanings which may conceive of them as ideas inseparable from moral values...There is insufficient attention to nonmodern social values which do not conceptualise gender relations in those terms (of individualism)."⁴⁰

Looking to develop a conceptual alternative to the binarism which organises the representation of non-Western women, Ong adds that "as a trope of feminist discourse...she is seldom perceived as living in a situation where there is deeply felt tension between tradition and modernity."⁴¹ This last point is crucial, since the alternative politics of location which Ong has in mind is not one in which the specificities of non-Western women are recovered through an attention to their locality which subordinates Western knowledge, but rather one which tries to problematise the return to locality in the sense of a return to final epistemological markers which organise the play of culture and identity. Thus, Ong argues that Western feminists "need to maintain a respectful distance, not in order to see ourselves more clearly, but to leave open the possibilities for an understanding not overly constructed by our own preoccupations."⁴² By this she appears to mean that "When we jettison our conceptual baggage, we open up the possibilities for mutual but partial, and ambiguous, exchange."

The politics of location, then, refers to the absence of real authority which inheres in the speaker's voice when the context of articulation is always inscribed with his or her finite relationship to knowing the other. This realisation that knowledge is therefore always situated knowledge constitutes what Lata Mani has described as "The revolt of the particular masquerading as the general," which "has sharply brought into focus theoretical and political questions regarding positionality and identity."⁴³ As she suggests: "As claims to universality and objectivity have been shown to be the alibis of a largely masculinist, heterosexual, and white Western subject, both readers and writers have had to confront their particularity and history."⁴⁴ More specifically, Mani argues that

"Gender, race, class, sexuality, and historical experience specify hitherto unmarked bodies, deeply compromising the fictions of unified subjects and disinterested knowledges."⁴⁵ As a result, she affirms Chandra Mohanty's characterisation of location: "'Location' in her terms is not a fixed point but a 'temporality of struggle,' characterised by multiple locations and non-synchronous processes of movement 'between cultures, languages, and complex configurations of meaning and power.'⁴⁶

The key point is that once location is related to the gendered, racial, sexual and other contexts of the speaker, knowledge loses the universal, objective and disembodied appearance with which it is cloaked in the liberal and radical tradition and recovers its essentially narrated and therefore contested character. That is to say, when "the subject" is understood to appear as such by occupying not merely diverse but more importantly politically contradictory subject positions its relationship to knowing then has to be seen as essentially finite. There is, in other words, no transcendental horizon of Being in which it can understand itself as self-presence. Instead, as we have seen the subject is always a Being-towards-something and therefore contingent and, as Mani says, historical. Most importantly, location loses its fixed spatial understanding and instead becomes understood in terms of a duration in which configurations of cultural power attempt to discipline self-knowledge by limiting it to particular sites of identification. Hence, for Ong, gender is "a symbolic term not separable from domains such as the family, the economy, and politics, but as embedded in discourses and images marking social boundaries and self-reflective identities."⁴⁷ To fix location spatially, I would therefore argue, is to write identities politically. As Mani notes, for Mohanty the politics of location refers to "the historical, geographic, cultural, psychic and imaginative boundaries which provide the ground for political definition and self-definition."⁴⁸

In addition to this, though, Mani raises the important point that location is not merely about the location of the speaker. It is also about reception given to an enunciation by the receiver. In this way, Mani highlights the way in which the Western

feminist discourse criticised by Ong might undergo the rupture of resignification when different groups of Third World women bring it within their own sphere of finite knowing. She therefore points at the "multiple mediations" of subjectivity through which knowing is mapped as a political location. When knowledge is mediated by the finite singularity of both speakers and receivers, the meaning which is given to identity is always "in process" so that its dominant characteristic is movement, or what we have seen Derrida describe as iteration: the on-going dialogue of non-identical sameness between identity and difference which he sees as central to the practice of thinking critically on the question of the present.

Within this, Mani's point is that the process of travel by postcolonial intellectuals from the Third World to the West creates a tension between identity and difference along the axes of experience and intellectual approach which cannot be ignored. The need identified by Mani's analysis of location is therefore to understand the relationship between cultural location and the formulation of a critical problematic. For postcolonial feminists such as Mani this problem is particularly acute. The situatedness of the speaker-writer in the location of the coloniser leads to the charge of both inauthenticity and ideological contamination. For the postcolonial intellectual this charge comes respectively from First World and Third World intellectuals who thereby forget both their own situatedness. To accuse postcolonials of either being inauthentic or else selling out is therefore to miss the point. Instead, because the location from which they write is constantly rearticulated between the centre and the margin, postcolonial intellectuals like Mani raise the question of the possibility of authenticity *as such*.

One of the important contributions of Derrida and postcolonial feminist writers like Lata Mani is that they recover the question of subjectivity and so return the issue of critical agency to the task of thinking. That is to say, rather than reproducing metaphysically reductive attempts to theorise agency, in which the subject either exercises free will (as in liberal theory) or is coerced (as in the radical tradition), they

explore the space of presencing where thinking has to stop for these theories to appear as knowledge. In Heideggerian terms, this focus on agency in terms of either free will or coercion reflects the metaphysical preoccupation with the ontic difference, the differences between particular beings with respect to their Being, and the forgetting of the ontological difference where the question of Being itself can be raised. The crucial point here is that the liberal and radical traditions construct their theories of agency in such a way that it becomes difficult to explore how individuals might simultaneously resist subordination, yet continue to enact structures of domination. This of course takes place because their view of domination is organised around the idea that victims and oppressors are existentially opposed to one another.

In opening up this closure, writers like Derrida, Ong, and Mani therefore help us to understand not only why margins are consistently represented as lacking agency in Western political discourse, but also that these structures are best understood when the theories offered there are returned to thinking; something which occurs when we are able to understand that the margin itself has to be centred. The point, once again, is that such a critical interrogation of agency prompts the reader to question whether there are indeed any centres, or whether in fact there are only margins with greater or lesser representational resources which are then able to simulate the effects of their centrality.

As I have just noted, the traditional approach to the question of agency within the Western radical tradition has been to write the margin as the victim who is coerced. However, this move relies upon a displacement of the question of location by presupposing the presence of a universal moral imperative, one which allows the victim to be associated with marginality. While this is, of course, productive in that it makes it possible to resist oppression, on the other hand it quietly reinforces the concept of the centre to which oppression itself can turn for its own legitimation. How many wars, for example, have been fought in the name of God, Humanity, the people, the nation, Freedom, Democracy, or Mankind, but have failed to deconstruct the substitution of one

form of moral closure for another which is at work when a finite subject speaks in the name of God, Humanity, etc. That is to say, because it is ungrounded moral universalism can only authorise installing a series of singularities in the place of the universal, something which can then lead to the imposition of an oppressive centre if its provisionality is forgotten. It might, therefore, be possible to use the discourse of moral universalism strategically in order to challenge individual examples of oppression. However, when it is used unreflectively it fails to understand, and in fact supports, the metaphysics which authorise acts of oppression to appear.

As a result, the discourse of moral universalism relied upon by radicals presupposes and so leaves unthought the very categories of "victim" and "oppressor" which ought to render its ontology untenable. Like the self-present subject within liberal political theory, they are the concepts which must remain outside or unthought if this discourse is to constitute the structure from which it derives its authority to speak (in a disembodied fashion). The point here is that by displacing politics into moral imperatives, victims and marginalities in general are inscribed as passive beings who are acted upon. Liberal and radical theorists thus deploy the category of the victim (usually because it allows for measurability and so can be addressed in legal discourse, or else because it permits a methodology around which the field of "the problem" can be closed and the ontic difference theorised) without understanding that subjectivity is a more dynamic concept in which victims and oppressors cannot be deployed ontologically because they are already presupposed within the logic of each other's field of knowing. Critical thinking which takes its lead from Derrida would at this point therefore look to recover the moment when the identities of victim and oppressor are at work simultaneously within the same political subject. Therefore, claiming that marginal voices are victims in all contexts serves only to legitimate certain situated knowledges which rely for their authority upon the substitution of a margin for a centre as a site to which moral and political appeal can then be made.

In this respect, just as the centre lacks a final authority outside of the differential system of margins through which it is constituted, so the margin has no final authority outside of the substitutions which centre it in its marginality. Thus, the margin can only ever be supported as a "strategic essentialisation" from which to enact the first phase of deconstruction, that is, resistance to the closure which the use of binary distinctions puts in place.⁴⁹ This is important not least because, as we have already seen, the essentialised margin can itself cover over practices such as feet binding, sati, and clitorectomy which inscribe their own centres and margins and constitute the victim within their own range of subaltern identities. Therefore, unless the discourse of marginality is seen as a short term measure which takes account of the question of subjectivity as essentially undecidable rather than as merely victims and oppressors, it runs the risk of joining the radical tradition in reproducing the metaphysical reduction of the political to simply the question of politics which has characterised the liberal tradition.

In this respect, despite their limitations neither radical nor liberal thought should be abandoned; when identity can only emerge from within difference this is hardly an option, or at least only an option for those still thinking metaphysically. Instead, they need to be approached with discretion. This is because radical and liberal theory are based upon a politics of reassurance which can at best only have the value of the strategic essentialism described above. The point here is that reassurance is the key function of theory since it allows the question of the possibility of Being to remain forgotten, thus calming the existential anxiety of an otherwise finite subject.⁵⁰ The politics of reassurance therefore follows the same logic which we have already seen informing the critique of location. That is to say, it takes as already present the concepts of victim and oppressor which, however, first have to appear from within thinking. It is for this reason that they have to be seen as essentialisations which can be rationalised as uncontested only in terms of a temporary ethical strategy.

It is in this context, then, or this space in which thinking is again possible, that both radical and liberal theory can be thought of as discourses of both domination *and* emancipation. That is to say, they gesture towards what Foucault has in mind when he suggests in his later work that nothing is ever good or bad, but that everything is dangerous.⁵¹ In other words, since they are discourses which are immersed in the distinctions which are involved in the coming into presence of the self, they offer what we could describe as a "dangerous protection." In this respect, ontological distinctions like the victim and the oppressor need to be understood as the essentially ambiguous achievements of metaphysics, given that the passage through metaphysics is inescapable if concepts are to be contested and politics is to enable transformations.⁵² Therefore, like the theories in which they are revealed as simply present-at-hand, the victim and the oppressor need to be seen within an aporetic logic in which they gesture towards both domination and emancipation, since it is from within this logic that they not merely derive, but in fact exist as, their potentiality for critical agency.

Depending upon the stage of thinking which the critique of self-presence is passing through, the essentialisation at work in the opposition of the victim and the oppressor as political identities will locate either a moment of emancipation if it is recovering difference from within a structure whose centre has been allowed to remain unthought and whose politics are therefore totalitarian, or else a return to domination unless this recovery is seen as part of a wider project to keep all concepts essentially contestable. The importance of using terms like the victim and the oppressor strategically is therefore that it allows their structurality to remain within thinking and not returned to theoretical speculation. In this respect, their use in discourse is a question of responsibility, so that they can only be used strategically to affirm the moment of undecidability within which the structure of all political subjects has first to be thought. Therefore, the practice of naming the victim or naming the oppressor only becomes legitimate when it serves to enable the representation of a subject whose essentialisation

can be identified with an ethical strategy which works towards the recovery of this moment.⁵³

This discretionary or strategic use of essentialised or uncontested concepts therefore helps us to understand how we need to approach situated, singular, and finite knowledges, including our own. It therefore also suggests a very different way of responding to the problem of marginality from that which characterises liberalism and radicalism. Here both of these theoretical traditions presuppose an objective moral space which authorises them to speak on behalf of the other. However, it is the lack of authority which exists in this space which Derrida's deconstruction of the grammatical operation of metaphysics has revealed. Gayatri Spivak broaches the consequences of this for critical intellectuals under the notion of "earning the right to criticise."⁵⁴ If the problem which confronts situated knowledge is the way in which it is debarred from taking a critical position on behalf of the other by the kind of finitude which renders this position inauthentic, Spivak suggests : ""Why not develop a certain degree of rage against the history that has written such an abject script that you are silenced?" Then you begin to investigate what it is that silences you, rather than take this very deterministic position - since my skin colour is this, since my sex is this, I cannot speak." It is through such investigations, in which the speaker becomes conscious of the historicity of his own discourse and the way in which this inflects upon his representation of the other, that the right to speak can be earned.

This approach to the terms under which we might speak for the other are consistent with what Derrida has more recently alluded to as an enlarged use of reason, where I take this enlargement to refer to that moment of politicisation in which the reasoning subject confronts himself with the ethical consequences of his finite ability to know the other. For Derrida, it is only through this enlargement that we can be responsible, that we can see that whatever it is we decide - for example when we decide the identity of the victim through the use of a legal precedent - will remain essentially

undecidable due to the ambivalent positioning of the other (the oppressor within the victim whose moment remains unthought) through which any decision both gains and loses its centre. In other words, rather than assuming that the right to speak is grounded in the idea of the victim as a transcendental site of subjectivity, we are able to see that it is only through the enlargement of our reason, which is paradoxically found in narrowing our possibility of knowing, that we can affirm the possibility of speaking. In this respect, our right to speak for the other depends upon our commitment to that kind of persistent critique of the essentialisation of the other as just the victim, since it has traditionally been the narrative of the "other as victim" which has served to secure the position of the speaker in his subjectivity. The point here, then, is that through enlarging our understanding of the other we simultaneously narrow our inflated understanding of ourselves and thus open up the possibility of a more democratic way of Being-in-the-world.

CHAPTER TWO

WRITING FOR OTHERS

It is in the context of this reading of Derrida that I want to try to explain why I have written this thesis. This relates both to what has motivated me to write and to the subject for whom it was undertaken. Within both the liberal and radical traditions I think it is fair to say that it is assumed that in writing we attempt to write for someone. In particular, this means that we write for someone else, to use our critical insights from research and reflection to speak on their behalf. We therefore use our intellectual vantage point as a way of overcoming their finitude, to write as they would if they only knew a little better or could look beyond the ideological matrix which constrains the free action of their own thought. The radical understanding of this point was expressed perfectly by Max Horkheimer when he argued that,

The individual as a rule must simply accept the basic conditions of his existence as given and strive to fulfill them; he finds his satisfaction and praise in accomplishing as well as he can the tasks connected with his place in society and in courageously doing his duty despite all the sharp criticism he may choose to exercise in particular matters. But the critical attitude of which we are speaking is wholly distrustful of the rules of conduct with which society as presently constituted provides each of its members. The separation between individual and society in virtue of which the individual accepts as natural the limits prescribed for his activity is relativised in critical theory.¹

In this respect, it is its historical analysis which provides critical theory with its vantage point. As Horkheimer adds later in the same essay, "The viewpoints which the latter derives from historical analysis as the goals of human activity, especially the idea of a reasonable organisation of society that will meet the needs of the whole community, are

immanent in human work but are not correctly grasped by individuals or by the common mind."⁵⁶

Horkheimer is of course interesting because he was one of the first radicals to question the Marxist belief that such a vantage point was to be found in the proletariat. Given that advanced capitalism had demonstrated the inability of the proletariat to provide a sustained struggle against structures of domination, he argued that the role of the critical theorist was not to seek detachment from all classes, the traditional role assumed by the "liberal intelligentsia."⁵⁷ As he noted, "such a neutral category corresponds to the abstract self-awareness typical of the [bourgeois] savant."⁵⁸ Rejecting the division of labour he saw here, Horkheimer argued that the role of the theoretician was instead "to hasten developments which will lead to a society without injustice," with the result that "his presentation of societal contradictions is not merely an expression of the concrete historical situation but also a force within it to stimulate change."⁵⁹ As he noted, this can lead to "the ever present possibility of tension between the theoretician and the class which his thinking is to serve," yet as he maintained, "If such a conflict were not possible, there would be no need of a theory; those who need it would come upon it without help."⁶⁰ In short, in Horkheimer's vision of critical theory, "the task of the critical theoretician [was] to reduce the tension between his own insight and oppressed humanity in whose service he thinks."⁶¹

As we can see from Horkheimer's account of critical theory, although they take different positions on the question of intellectual neutrality, for both liberals and radicals alike writing is a humanistic exercise in which a certain relationship which we share towards beings-as-a-whole allows us to speak in the name of the other. That is to say, it is because all beings are grounded in their particularity by a shared relationship towards Being that it is possible to not only relate to others in their "oppressed humanity" but to write in their name. In this respect, their motivations are always ethical, based upon the empathetic possibilities opened up by the unlimited possibility of knowing, something

which beings have by virtue of their relationship to beings-as-a-whole. It is therefore because beings can empathetically relate to other beings in their Being that liberals and radicals claim the authority to speak and write in the name of others. In other words, it is the ethical possibilities opened up by the possibility of Being as self-presence which becomes the reason why they write.

However, it is precisely because it involves "writing" that the event of writing a thesis can never simply be what it appears for liberals and radicals. Instead, because writing raises the question of the positionality of the one who writes, the implications of writing for others takes us beyond the conventional motivations for writing a thesis. As we have seen, it is the inability of the writer to distance him or herself from particular locations of gender, sexuality, race, and class which leaves a permanent and irreducible rupture in the humanistic project. That is to say, it is because writing is only possible within a system of differences whose closure is dependent upon the position of the one who writes that the act of writing for others is from the first overdetermined by the politics of reproducing the identity of this writer. Contrary to Horkheimer's claims, therefore, the critical theoretician does not occupy a privileged site of deconstruction which enables him to "reduce the tension between his own insight and oppressed humanity." Instead, he occupies the site of a gender, sexual, racial and class particularity which then becomes projected as the standard of humanity to which every experience of oppression must be reduced. In other words, in writing for others Horkheimer does not reduce the tension between himself and the other. Rather, his representation of the other - the other's essentialisation as "oppressed humanity" - becomes a way of reproducing the authority of his own particularity to intervene as a privileged site of cultural power. Of course, this question is never revealed to the reader or made the object of self-conscious critical reflection by Horkheimer himself.

The basic problem here is that, in Heideggerian terms, liberals and radicals both regard writing for others simply as an exercise in theoretical speculation about why one

being differs from another, and in this respect their work takes place entirely within the concerns of the ontic difference. That is to say, it is because they resolve the question of Being in a humanist assumption about beings-as-a-whole - the kind of assumption which leads them to distinguish between themselves as the investigating subject and an homogeneous, "oppressed humanity" as their critical object - that writing for others is understood simply as a matter of speculating on what separates particular beings in their relationship to Being. The ethical justification which liberals and radicals invoke is therefore that in writing for others they can communicate what it is that prevents beings from being with other beings in their humanity. In this respect, their theoretical speculation is directed towards constantly extending the parameters of the ontic difference.

However, as we have seen, their moral justification is itself only justified through a repudiation of the elemental relationship which writing has to power: the power which is exercised when the act of writing reproduces the authority of the one who writes. That is to say, writing for others simulates the effect that an authentic subjectivity inheres in the position of the one who writes, whereas those who are written for are merely an "oppressed humanity." The important point here is that this more critically self-reflective understanding of writing forces us to reexamine the ethical justification for writing a thesis, for if writing a thesis is about writing for others yet what is written about the other cannot finally be separated from reproducing the one who writes and the privileges of subjectivity which accompany this, then writing for others is always already an appropriation of the other. The point here is that because writing for the others must also involve writing about the other, the boundary between the act which simply attempts to communicate with the other and the act which appropriates the other into the structure of our self-representation is erased. In other words, it is because the attempt to write for has an imperfect origin in a finite writing subject that it is from the first already incorporated within a broader exercise of power; the kind of which we find in Horkheimer's attempt to

write for an "oppressed humanity." Thus, there is an internal relationship between the representation of the other and the reproduction of the self which means that there is never a vantage point from which to write for the other.

We can appreciate this if we consider briefly Derrida's reading of the gift. Here Derrida challenges the assumptions which govern the act of giving a gift in the same way that I have tried to challenge the assumptions about the subject/object ontology which we make when we start to write a thesis. Here we return again to Derrida's insight that because the trace marks an internal limit to any claim of self-presence a permanent equivocation is left over the subject who makes this claim. In the case of the giver of the gift, it is because the performance of giving the gift is internal to the constitution of the giver as the subject who gives, that giving the gift marks out the limits within which the giver appears in his subjectivity. Like the other for whom we write, the giving of the gift therefore provides the horizon within which the subject can appear. In this respect, both writing and giving are inextricably connected with naming, since in giving the other a name, which we do in writing for "her," we represent the object which provides the horizon within which "we" can appear. The point here is that the act of representation sets in motion a psychological circuit within which the giving subject can appear in his Being. As Derrida notes, "The simple consciousness of the gift right away sends itself back the gratifying image of goodness or generosity, of the giving-being who, knowing itself to be such, recognises itself in a circular, specular fashion, in a sort of auto-recognition, self-approval, and narcissistic gratitude."⁶² As I have suggested, the same process is to be found in writing for others. That is to say, both the experience of writing for others and the giving of the gift work to reproduce the writer-giver in his subjectivity.⁶³ In writing for others we might therefore say that the writer gives himself the gift of Being.

Because of this narcissistic circuit of self-approval, our motivation for writing a thesis can no longer be justified simply by a desire to write for others. Rather, it must

also engage in a critical reflection on the particularity from which we write and the moment of cultural power which it deploys. If this is successful, we may no longer write in a way which simply appropriates the other for the reproduction of the self, but instead reflect on those sites where the trace of the other reveals that our subjectivity must always be produced from within a moment of difference which simultaneously decenters it. As Gayatri Spivak has suggested, "the historian must suspend (as far as possible) the clamour of his or her own consciousness, so that the elaboration of the insurgency, packaged with an insurgent-consciousness, does not freeze into an "object of investigation."⁶⁴ The point which she is making here is that since the self is only made-present through the repudiation of the trace - which for Spivak is present in the "epistemic violence" which constitutes "the colonial subject as Other," "the asymmetrical obliteration of the trace of that Other in its precarious Subject-ivity"⁶⁵ - a self-conscious reflection on the process of writing for others - which is therefore a reflection on the movement of the trace between the self and the other - can give us an experience of the cultural privilege through which this production takes place. Under these circumstances, we do not encounter the other as an object of investigation which is then opposed to us as an investigating subject, but rather, because otherness is always internal to presence, as an experience of the otherness within us which leaves the subject open to the possibility of transformation. As Derrida has suggested in a recent text, the aporias of narcissism are in fact "the explicit theme of deconstruction."⁶⁶

This approach to writing is similar to Foucault's account of his own experience of writing, one which also provided his ethical justification for why he wrote. In his later interviews he explicitly associated writing with what he called a "limit experience," a term which in French carries the double inflection by which it also refers to undertaking a "limit experiment."⁶⁷ Essentially, Foucault believed that such an experience can come when we attempt to write at the limit of the regime of truth in which we are constituted as a writing subject. Such an experiment, he suggested, has the possibility "of "tearing"

the subject from itself in such a way that it is no longer the subject as such."⁶⁸ For this he takes his point of reference from the work of Nietzsche, Blanchot, and Bataille, which he contrasts with the phenomenological attempt "to grasp the significance of daily experience in order to reaffirm the fundamental character of the subject, of the self, of its transcendental functions."⁶⁹ Thus, Foucault argued that when we write we should not look to establish a set of historically verifiable proofs but should instead focus on the experience which writing a book allows us to have.⁷⁰ The point here is that truth is always a fiction - that is, neither true or false - which is constructed inside experience itself. Therefore, Foucault's idea of writing is really about exploring the possibility of truth as we experience it as a historically constituted subject. As he put it, this is "an experiment that might permit an alteration, a transformation, of the relationship we have with ourselves and our cultural universe: in a word, with our knowledge."⁷¹ Consequently, he felt that he was not a theorist but rather an experimenter. As he noted, "'I consider myself more an experimenter than a theorist; I don't develop deductive systems to apply uniformly in different fields of research. When I write, I do it above all to change myself and not to think the same thing as before."⁷²

Writing for Foucault was therefore simultaneously an experience of who we are and also an experiment in who we might be otherwise. In writing at the limit of who we have come to be we therefore experiment with other experiences for the self. As he said in 1982, "The main interest in life and work is to become someone else than you were at the beginning. If you knew when you began a book what you would say at the end, do you think you would have the courage to write it? What is true of writing and for a love relationship is also true for life. The game is worthwhile in so far as we don't know what will be the end."⁷³ An important point here is that this experience of experimenting with the truth of ourselves is in some sense inevitable because of the nature of writing itself, that is, because writing itself cannot finally determine the field of truth either for its subject or its object. Here it is again worth quoting Derrida for whom, as we have seen

already, writing is also basic to life. As he says, "It is because writing is inaugural, in the fresh sense of the word, that it is dangerous and anguishing. It does not know where it is going, no knowledge can keep from the essential precipitation toward the meaning that it constitutes and that is, primarily, its future."⁷⁴ It is therefore because a reflection on the nature of writing allows us to resituate ourselves as the one who writes within an experiment about our relationship to the production of truth that the event of writing for others can also be an experiment in other experiences of the self. Therefore, if we locate it in this larger and more self-critical understanding of writing, then writing a thesis is in fact an experiment in how what we are today, the present within which we identify ourselves as a subject of knowledge, comes into presence. In other words, in writing a thesis what we look to encounter is the possibility of a limit experience. As Foucault reminds us, it is only worthwhile if we don't know what will be at the end.

As this discussion suggests, the need to approach the task of writing for others as the search for a limit experience comes from a critical reflection on the cultural power which inheres in our particularity when we represent the other for whom we write as an "oppressed humanity." A limit experience therefore trips us up by bringing us face to face with the experiences which are privileged by our positionality. Gayatri Spivak finds that she encounters this limit in interviews. As she notes, "what I like about interviews is that they teach me things, not only about myself, but about things I've thought...It's a wonderful way of 'othering' oneself. I like to surrender myself to the interviews, is what I'm saying."⁷⁵ In this thesis I have attempted to have a limit experience by a roughly similar strategy: by surrendering myself to the impossibility that the other can ever simply occupy the position of the margin. For by showing where the other is also part of the centre I deny myself the opportunity to deploy the term "oppressed humanity" as a basis for my authority to speak and write for the other. In this respect, by highlighting the ambivalence in which the other is both victim and oppressor, I am able to leave a permanent question mark over the stability of otherness and thus over my critical

distance as the one who writes. At this point it becomes possible to identify the privilege which my re-presentation of the other serves to reproduce. In other words, the possibility of a limit experience can only come from taking a persistently critical approach to the other. Not to denigrate the other as marginal (this is the obverse of a critical approach since it simply essentialises the other as the object of my subjectivity), but rather to show where the other is always centre and margin, and thus an opening onto other others. For it is through the persistent encounter with other experiences of otherness that the heterogeneity of the self can be explored. As Spivak has remarked, "[T]here are people whose consciousness we cannot grasp if we close off our benevolence by constructing a homogeneous Other referring only to our own place in the seat of the Same or the Self."⁷⁶

The point here is that by simply representing the other as just the oppressed margin I work to reproduce an image of myself which is akin to that of the colonial missionary who justifies the act of writing on the humanistic grounds that he is attempting to "save" someone, that is, to understand what it is that prevents one being from being with other beings in its Being. As Spivak has pointed out, "There is an impulse among literary critics and other kinds of intellectuals to save the masses, speak for the masses, describe the masses." However, as she adds, "On the other hand, how about attempting to learn to speak in such a way that the masses will not regard as bullshit."⁷⁷ In this respect, to see the other as both centre and margin comes closer to the other's own experience of itself in relation to the exercise of cultural power. Rather than patronising the other by inscribing him or her with the name of oppressed humanity, this approach explores the other as a site of both resistance and repudiation and therefore of both freedom and domination. It is this ambivalent approach to the other which must then necessarily become an ambivalent approach to the self, one which might allow "us" to renegotiate the basis upon which "our" authority to speak or write for "them" is established. At least the other will be less likely to regard what we write as bullshit. As I have suggested, to do this we need to begin by exploring where the movement of the

trace historicises the standard of humanity which we invoke in naming the other as an oppressed humanity.

Another way of putting this is to say that it represents a way of carrying out what Spivak means when she refers to "the project of unlearning one's privileged discourse."⁷⁸ Here the privilege of one's discourse is in some sense unlearned because there is no longer a homogenised other around which we can justify our authority to speak. Instead, it is through the trace of the margin in the self-centre that we can see this authority as a foreclosure of the other. In this respect, one's privileged discourse is unlearned when one comes to the point where one's first inclination is to "speak to" rather than "speak for" the other.⁷⁹ This approach finds its referent in what Spivak describes as the early phase of Derrida's work, where he focused on the task of "keeping the question alive." In this case, we keep the question of the self alive by saying no to the other in his or her homogeneous otherness. For not questioning the other in this otherness - in his or her right to be other - whilst in some sense respectful, is also a reductive strategy which reproduces the self as forever self-same - a total and unerring image, incapable of slipping up. So in writing for others we must say "yes" to otherness but "no" to the other simply as other, to the other as only the margin.

As we shall shortly see, in this thesis it is by paying attention to the trace of sameness and difference which is transacted between multiracial Americans and the dominant images of American cultural identity that I have tried to unlearn something of my own privilege as a white, middle class, heterosexual, male, would-be-intellectual. In other words, through a reflection on the strategies of appropriation which are brought into play in writing for others I have become aware that although I am not directly represented in this thesis myself, that I am its subject rather than its object, signs of my subjectivity are in fact present everywhere and are therefore open to deconstruction on those same sites where dominant images of American identity are shown to be reproduced. Thus, the limit experience which I seek to have in this thesis comes with a

critical reflection on the trace of dominant images of American identity within the structure of my own identifications. As I have suggested, the most critically responsible way of carrying this out is to explore those subject positions where the multiracial other of American identity is not simply other but rather both self and other, since it is at this point that we can understand American identity not as a substantive referent but rather as an intertext towards which other texts, including the text which carries my name, are drawn. I therefore try to respond as effectively as I can to Spivak's intervention and suggestion that

What we are asking for is that the hegemonic discourses, the holders of hegemonic discourse should de-hegemonise their position and themselves learn how to occupy the subject position of the other rather than simply say, "O.K., sorry we are just very good white people, therefore we do not speak for the blacks." That's the kind of breast-beating that is left behind at the threshold and then business goes on as usual. The deconstructive problematisation of the positionality of the subject of investigation has stood me in very good stead. That is....one of my critical projects is not to allow myself to occupy the place of the marginal that you would like to see me in, because then that allows you to feel that you have an other to speak to."⁸⁰

Therefore, unlike more conventional approaches, the experience which I have looked for in writing a thesis is not primarily the liberal experience of clarity, the experience of being clearly understood; in order to achieve this I would have to remain within the assumptions set out in the ontic difference.⁸¹ Rather, it is to experience the ambivalence of the other as an opening to the question of my Being, and to the chance that the readers of this thesis might feel compelled to perform this same experiment.

Outline of this Thesis

This thesis attempts to explore the demand made by many multiracial Americans during the 1990's to have a multiracial category added to the next US census. The campaign which became organised around this demand reached something of a culmination in July 1997 when the Office of Management and Budget (OMB) announced that although a separate category designated "multiracial" would not be added to the census form, the category designating "Other" would be removed and would be replaced by an opportunity for individuals of mixed-race to check any of the four main categories - white, black, Asian and Pacific Islander, and Native American - which applied to them. Therefore, although less than many of the groups lobbying for this category had hoped for, The Association of Multiracial Americans (AMEA), the bimonthly internet-based journal "Interracial Voice," and the Georgia-based Project RACE (Reclassify All Children Equally), all interpreted this as a sign that multiracial identity had at last been recognised in America. As I argue later in the thesis, in many ways this completes the earlier recognition of miscegenation by the Supreme Court in its 1967 ruling in *Loving v. Virginia*. That is to say, it might be argued that the right to marry someone of another race can only be regarded as legitimate when the offspring of that relationship are also recognised as a legal person.

In this respect, although recognition on the census might appear to be of minimal political significance, its importance derives from the fact that it is the starting point from which the achievement of any and all rights takes place in American politics. Because it identifies the distribution of racial identity across the population, the census allows data on discrimination against any group that is identified on it to be gathered. It is from here that more concrete claims for anti-discrimination legislation can be made to Congress as well as for the extension of the equal protection clause by the courts. Thus, recognition

on the census is crucial to gaining political rights; this is why it has been the focus of attention for multiracial Americans over the last six years.

As this suggests, for those involved such as the AMEA, Interracial Voice, and Project RACE, recognition on the census represents the first stage of a process in which they hope to gain the same recognition as other minority groups in America, that is, protection from discrimination under the equal protection clause of the Fourteenth Amendment. In many respects, the chances of this happening appear to be high. Statistical surveys show that interracial marriages have increased from 310,000 in 1970 to 1.5 million in 1990 and that the number of multiracial children has risen twenty-six times as fast as any other group. This has been made possible both by the more liberal marriage laws in the post-Loving era and by the increasing levels of immigration which have occurred since 1945. Thus, a 1991 survey found not only that 72% of Americans knew married couples from different races but also that 74% felt that interracial marriage was acceptable for both themselves and others.

However, while I have drawn upon some empirical observations in order to bring it to the attention of readers, the context in which this thesis approaches the demand to recognise multiracial identity in America is more theoretical. Rather than taking a purely empirical approach, the limitations of which I shall discuss later in this outline, I attempt to explore the demand to have a multiracial category added to the US census as a question of identity politics. In order to do this, I mark out three main areas through which the thesis must work in order to provide a critical basis for its case study. These are the question of subjectivity, the relationship between the subject and the law, and political limitations of liberal theories of group rights.

Because it focuses on the issue of critical agency, that is, how the subject comes to act politically and therefore how it becomes a subject as such, the first part of the thesis on subjectivity addresses the main question raised by identity politics for the theory of the subject. Although I discuss it in more detail later in this outline, the point here is

that if the insight of identity politics is that the subject is always produced as a political identity, and therefore is in some sense always inside the exercise of power, then the location of critical agency can no longer be understood in terms of an external aporia of the Kantian type and instead has to be rethought. It is the conclusions of this attempt to understand how critical agency can take place within the totalising effects of power which provides the intellectual context in which the relationship between the subject and the law and liberal theories of group rights are analysed in parts two and three. It is then the critical insights drawn from this analysis which are explored in the case study.

Therefore, as I shall reiterate later in this outline, it is important to understand that the function of the case study within this thesis is primarily to illustrate a wider set of philosophical and theoretical concerns, and while I hope that the case study will stand out through the way in which it illuminates them we need to appreciate even at this early stage that no conclusions for the thesis itself will be drawn from it. In this respect, the phrase "the politics of multiracial identity in America" is intended to evoke not the relationship which the demand to recognise multiracial identity has to American politics, but instead the relationship which multiracial Americans have to the political itself through the way in which their demand for recognition reproduces dominant legal and cultural representations of the term "America." To understand this point, however, we need to take a further, though still initial, look at the question of subjectivity and its organising concern for the issue of critical agency.

As I hinted at above, within traditional approaches to political theory the question of critical agency is resolved by positing the ego-centred subject found within the Cartesian-liberal tradition who finds his sense of agency simply in the exercise of a rational free will. In this context, the critical dimension to agency is provided by the kind of Kantian moral imperative which this rational capacity dictates as the logical precondition for freedom. In this respect, the source of critical agency is located outside

the subject in an external aporia; that is, a universal imperative which applies to all subjects by virtue of their being rational.

However, since the main characteristic of identity politics is that it explores the issues which appear for a subject who is produced at the intersection of such subject positions as race and gender or race and sexual orientation, I argue here that it is necessary to make an immediate departure from such an ego-centred approach and to explore the question of critical agency in terms of an internal rather than an external aporia. That is to say, we need to start to examine the source of critical agency in terms of those repudiated subject positions which make speaking as any kind of subject possible at all. In this respect, the ego no longer provides the centre of the subject. Instead, this centre always lies elsewhere as, for example, women of colour attempt to recover their racial identity which is repudiated within dominant Western understandings of female identity, or as gay black men attempt to recover their sense of black identity from within dominant black understandings of male identity. As this suggests, the ego is decentred because the moral imperative, whilst articulated in the name of universalism and aimed at political inclusion, is always localised and racially, sexually, and gender specific. This in turn shows that critical agency is always entwined with the power to actively produce political identities, since what is resisted in identity politics are those dominant cultural discourses which have the ability to reproduce the self as a homogeneous subject.

In looking for an approach which locates the possibility of critical agency in an internal aporia I begin by exploring the account of subjectivity set out by Lacan. The purpose of this is to extend Lacan's insight into the "other scene" which provides our conscious ego with its imperative to resist existing structures of social and political recognition along the lines which Derrida sets out in his reading of differance. The point here is that where Lacan argues that the Real represents a permanent site of resistance which is separate from the Symbolic authority which first constitutes it, I employ the

principle of undecidability at work in Derrida's reading of difference to deconstruct the privileged moment of difference which gives the Real its permanence in Lacan's analysis: a move which, as we shall see, allows the Real to become a variable and more democratic nexus around which resistance can be staged. The point here is that Lacan can only make the Real a permanent site of resistance by ignoring the privileging of heterosexuality over homosexuality which takes place in the theory of incest prohibition. In contrast, Derrida's reading of difference suggests that there is originally no centre to the Symbolic, so that the psychoanalytic positing of the incest prohibition as the basis upon which the subject resists domination can itself be read as an exercise of that kind of power whose effect is to produce the self as just one kind of political identity. In this respect, if we continue to work within Lacan's terminology we could say that if we take the play of difference in difference as our point of reference for the structure of the Symbolic - the site where the codes of social authority are put into play - the ego image which organises our Imaginary will then no longer refer simply to a heterosexual ideal but will instead be seen as capable of fundamental alteration and contestation by homosexuality and bisexuality.

As my references here to the productive understanding of power might suggest, within this critical reading of Lacan I also use the play of differences which Derrida explores in his reading of difference to "retrieve" Foucault's insight that there is no outside to power, one which might be said to be in need of some retrieval since its critical review in the work of Lacanian theorists such as Joan Copjec. The importance of Foucault's work is that he shows that all identities are produced in and through systems of representation, so that the production of knowledge about subjects is inseparable from the exercise of power which constitutes them. However, the limitations of Foucault's analysis of the exercise of power is, as Copjec rightly points out, that it lacks the account of repression which is necessary for the formulation of critical agency and thus the possibility of the resistance which can lead to political transformation. However, as I

shall argue here, this is what Derrida's reading of difference recovers for Foucault's analysis of power.

Therefore, where Copjec follows Lacan and identifies the possibility of political transformation with the externality of the Real from the Symbolic, I use Derrida's insight that the Symbolic cannot finally be insulated from any contest over its structuring to argue that the critical possibilities of the Real lie precisely in the fact that it is always constituted within the Symbolic through those kinds of non-decisive repudiation which characterise the making-present of difference. In this respect, I argue that both Lacan and Foucault have grasped part of the answer to the question of subjectivity, though necessarily imperfectly. That is to say, Foucault is right to say that there is no outside to power, but only insofar as the possibility of transforming power relations lies in a moment of repression which is internal to the exercise of power itself. By that token, Lacan of course highlights the importance of repression to the possibility of critical resistance. However, as the terms of the incest prohibition suggests, he links this repression to a determinate understanding of the Real as the prohibition of heterosexual desire, thereby limiting a priori the scope within which the cultural and judicial norms which order the Symbolic can be challenged. So, for example, while women of colour can challenge the racial privilege which Western culture and law gives to the experience of whiteness in defining women's oppression, if we follow Lacan's account of critical agency it is impossible for a black or white lesbian to challenge the heterosexual terms through which that same culture and law defines legitimate sexual relations.

In this respect, it is only by locating the formation of the Real within the Symbolic, so that the organisation of the Symbolic is not governed by a privileged site of deconstruction but instead by Derrida's notion of undecidability, that it is possible to acknowledge the persuasiveness of power relations in modern society without undercutting the possibility of critical agency and political resistance. It is therefore because difference shows that the ideal image of the ego fixed in the Imaginary is not

limited by the incest prohibition, but instead has the character of the trace and so will be open to the rearticulation of each sexual identification from heterosexuality to homosexuality or bisexuality, that the moment of repression which defines the Real needs to be understood as part of the Symbolic and the Symbolic itself understood to have no centre. Instead, the Real is constantly refounded in the Symbolic as the centre of the Symbolic itself is refounded in that movement between critical resistance and abject repudiation which we find when there is not the subject *as such* but instead those intersecting subject positions whose work in producing the subject carries the same performative effect as Derrida identifies in his reading of difference.

The purpose of this of course is not to make the case that there are no limits to our identity as subjects, but rather that these limits are constructed politically within the Symbolic in and through the process through which it is centred. In this respect, it is the non-decisive repudiations to which this process gives rise which provide us with our sense of critical agency: our sense of an oppression within the structure of our subjectivity which must be resisted. Critical agency and resistance therefore arise from *within* the identifications which define us as subjects, since the repudiation of some of these identifications is effected a priori by the dominant cultural and legal norms which make identifying as any kind of subject possible at all. In other words, it is those possibilities of the self about which we may not speak which provide us with our critical agency and empower us to resist. As this suggests, although never outside of power we nevertheless retain the critical resources to transform the terrain of identity upon which power is exercised.

As both Jean Baudrillard's discussion of the transvestite and Judith Butler's analysis of the lesbian phallus reveal, the central role ascribed to the incest prohibition and the castration complex in psychoanalytic theory depends upon the unacknowledged repudiation of homosexual identity and the privileging of heterosexuality. It is this privileged difference which allows Lacan to centre the Symbolic and give a permanent

identity to the Real, so that as the threat of castration the Real is then represented through female genital anatomy: the absence of the phallus. However, since it remains unthought within the theory of the incest prohibition, the heterosexual privilege which organises Lacan's account of the Real leaves gay men and lesbians excluded on an a priori basis. In attempting to move psychoanalysis away from this restricted account of critical agency and towards a more generalised understanding of the play of negativity, one which allows the heterosexual norms which govern the Symbolic to be seen as politically contestable by gay, lesbian, and bisexual identity, I therefore use Derrida's understanding of differance to show where psychoanalysis itself falls open to a psychoanalytic diagnosis. That is to say, in relying on the possibility that the Real can be represented in the castration of the female, psychoanalysis itself is revealed as a site of fetishism, a fetish for the Real as something which is representable rather than, as differance indicates, undecidable and therefore unrepresentable in itself.

As I point out in the chapter, one way of situating the rather complex formulation of subjectivity undertaken in this chapter is to interpret Derrida's reading of differance as a more radical formulation of the performative account of Being which Heidegger provides in his account of dwelling and gathering, that is, as the point at which "Being-there" must also recognise the critical necessity of a moment of "Being-not-there." In this respect, "radical" comes to refer to psychological, so that I think that one way in which we can read Derrida's understanding of differance is as the "limit-situation" which appears at the intersection of Heidegger's phenomenology and Freud's psychoanalysis. As I suggested above, the wider implication of this is that although we have taken Lacan as a point of intervention into the question of critical agency and therefore focused on the repudiation of homosexuality within the heterosexual subject who resists his interpellation by the incest prohibition, the general idea that the political subject is only produced as such through a non-decisive repudiation, a situation in which the self is then marked as both victim (of the incest prohibition) and oppressor (of homosexuality),

homosexuality), provides a model for thinking critically about the production of political identity which can be extended to those sites where different identifications intersect: so that we can explore the location of critical agency and the formation of resistance at the point where gender or racial identity, for example, intersect with issues of sexuality. In this respect, the issues raised in chapter three provide the basis upon which the issues raised in parts two and three and then the case study are addressed.

Among the specific work being done in this area, this chapter builds upon two critical interventions which Judith Butler has made in her exploration of female subjectivity. In particular, my focus on the psychoanalytic limits of Foucault's account of power and my critique of the trace of metaphysics in the Lacanian theory of the subject draws upon a debate in which Butler has engaged which spans the period from the publication of Bodies that Matter: On the Discursive Limits of "Sex" (1993) to her more recent The Psychic Life of Power: Theories of Subjection (1997). However, while I build upon this in the sense that I consider the criticism which the psychoanalytic critic Joan Copjec has made of Foucault and the contribution which Baudrillard has made to the decentering of the psychoanalytic centering of the Symbolic, I also build upon it in the sense that I distance myself from what I believe is the failure of Butler to offer the Derridean critique of Foucault which I argue is necessary if we are to deconstruct the psychoanalytic subject in a manner which opens the question of critical agency to homosexual and bisexual desire. Without this critique, Butler is forced to draw simultaneously upon two readings of Foucault which, when set against each other in her texts, leaves the basis of her critical perspective in need of further analysis.

Even though this chapter might initially be unfamiliar to readers who have not explored the psychoanalytic displacement of that ego-centred subject who informs so much of the analysis undertaken in traditional political science, or for that matter worked through the Derridean reworking of Heidegger which provides my point of critical intervention into psychoanalysis, I believe that the chapter itself is structured so that

those with even a rather limited engagement with these texts will be able to immediately gain at least the ethos of what is going on there and why it is significant. As I noted above, the purpose of this chapter is to provide that critical analysis of subjectivity upon which we can attempt to think the coming into presence of the present on those two sites which are basic to an attempt to read the demand for multiracial recognition as a question of identity politics, that is, the subject who is before the law and the requirement made by liberal theorists of group rights that minority cultures represent themselves as authentic subjects. In this respect, I hope to shed some light (and some shade) on how multiracial Americans relate to the law when they demand equal recognition as a group identity when the production of the political subject, the relationship between the law and representation, and liberal theories of group rights are made the topic of a Derridean critique. However, it is important to keep in mind here that the former is only intended to be illustrative of the latter insofar as any reference to a political identity can never be privileged above the thought which thinks the possibility of its coming into presence.

In this respect, I need to emphasise here that this is not an empirically-based thesis. I do not begin from an empirical analysis of race and its place in American politics and then attempt to draw conclusions from this which are of a more theoretical or philosophical nature. To do so would obviously be to remain within the concerns of the ontic difference, a deconstruction of which I have taken as my point of critical intervention. If I were to take this route I would merely raise a variation on the analytic question of why race is a problem for American politics. In other words, I would assume that the question of Being was either resolved or else not a meaningful question and so simply try to explain why different racial beings differ in the relationship to Being-American. In this case, the first chapter of this thesis would probably be an historical account of racial politics in America. I would then perhaps look at different theories of race and complement this with a structural analysis of the American political system as it affects the question of race. I would then offer my case study as a way of gaining new

empirical insights into the historical narrative with which I began, and from this draw certain new conclusions both about racial theories and the American political system.

Instead, because I follow Heidegger and Derrida and so do see the question of Being as a meaningful question, it is not the question of how racial politics take place *in* America which is of interest to me but rather the way in which the discourse on racial identity is constructed and how this works to produce the political subject to which the name "America" refers. As this suggests, this brings into play an approach which is critically philosophical rather than empirical. This is why I have chosen to begin with the question of subjectivity, since it is from here that we can understand why it is that the subject needs to be seen as produced and the process through which this happens.

In this respect, to focus on race in America is to effect that closure for which the term "problem" has served as an authorising metaphor in traditional political science. Instead, what interests me is the excess at work in the recognition of racial identity which renders this closure problematic and which makes any empirical approach to thesis writing already a commitment to an existing system of domination. Thus, it is because race in fact only appears as a problem at the intersection of such subject positions as gender and sexual orientation that there is a cost to being recognised as a racial identity, a cost an empirical approach is unable to either imagine or account for. It is therefore because the racial subject which is included in the name "American" only appears through the repudiation of female gender and gay and lesbian sexuality that an empirical approach to this thesis is precluded. As we have seen, this is because by working along the ontic difference an empirical approach assumes that the subject can be understood as just one kind of being. A thesis which was empirically based would thus remain locked into a focus on just race from which it could not escape, at least not without raising those more critical questions about subjectivity which, as I have suggested, render an empirical point of departure itself impossible.

It is because of this that a case study can only be introduced into a thesis such as this as an illustration of a wider set of philosophical criticisms and arguments whose justification has already been provided for within this discussion itself. Any gesture towards the idea that the case study has a significance for the thesis outside of this would be to make the dangerous step of suggesting that the empirical carries a truth which cannot be deconstructed. Indeed, beginning with a reference to the case study suggests that it in fact represents a privileged site of deconstruction. In this respect, not only should it be fairly clear why we cannot begin the thesis by referring to racial politics in America, it should also be clear why the case study does not provide its focus either. Instead, it can only be spoken about in those contexts where a deconstructive move related to the question of subjectivity is already taking place or else after these moves have been completed as a practical example of deconstructive criticism.

This clarification of the way in which the critical focus of the thesis needs to be understood brings me to the first of the theoretical concerns which I will use to provide a context for the identity issues explored in the case study. Here it is precisely the notion that the law represents a limit for an already existing subject and that the law derives its authority from this relationship which is called into question by thinking critically about the question of subjectivity. I pursue this possibility in part two by means of three interrelated chapters, each of which returns the relationship between the law and representation to thinking. The narrative which joins these chapters together is that because the law as such, that is, the law as an idea of Justice, cannot be represented, and is in fact re-presented in each case of judicial interpretation, this idea in fact provides the critical resource which allows excluded individuals to resist the existing terms through which judicial interpretation identifies the legitimate legal subject. In other words, there is a tension between the law as an idea of Justice and the law as a system of precedent based rules which "re-presents" the subject of Justice as a foundation for legal authority. It is therefore the inability of everyday legal interpretation to actually represent the idea

of Justice outside of its identification with a particular racial, gendered, sexually orientated subject which allows excluded individuals to resist existing legal interpretations of the grounds for political inclusion in the name of Justice itself. The inability to represent the idea of Justice therefore leaves a moment of productive tension in the relationship between the subject and the law. On the one hand, it means that legal interpretation operates as a system of discipline by marking out the limits of the legitimate legal subject. On the other hand, it also marks that moment of excess in the foundations of the law which allows those subjects excluded from legitimation to justify their claims for political inclusion.

In the first chapter of part two I look at this relationship between the law and representation, initially by focusing on Kant's treatment of this in each of his three Critiques. Focusing on the sensible limits which Kant places on the possibility of experience, I pay particular attention to the critical possibilities opened up by his account of aesthetic judgment and especially of judgments of the sublime in the third Critique. As Kant's attempt to resolve the antinomy which surrounds such judgments indicates, although the law is only revealed in those sublime feelings which transgress the limits of our imagination, this is a transgression which itself already presupposes a temperament which is disposed towards moral feeling. Such an interplay of the limit and transgression suggests that as an idea of Justice the law can only be encountered by the subject in those "limit situations" in which the experience of the sublime comes into play. In other words, when the subject finds the basis of its subjectivity called into question.

Having gestured at the "trace" which here connects Kant to Foucault, Heidegger, and Derrida, I illustrate this point through a critical interpretation of the primal scene recounted by Freud in Totem and Taboo, where the feelings of guilt experienced by the sons who murder their tyrannical father can only be explained through the existence of a law which Freud suggests they in fact inaugurate. As an antinomy which is beyond resolution we then see that the moral law does not originate in the intervention of the

father but only with his coming back. That is to say, for the idea of Justice to be represented the father must be thought of as always already dead. In this respect, his identity as a victim for whom no one can be held responsible stands for that sublime excess which must be incorporated into the foundations of the law, but whose lack of precedence ensures that the limits of its imagination are constantly advanced. As such an aporia, he illuminates the critical potential of Derrida's recent suggestion that as a system of interpretations the law is a "violence without a ground" whose limit cannot be found within the metaphysical parameters of justice and injustice but instead in its production of the subject to whom questions of justice and injustice then refer.

The importance of this starts to be brought out in the second chapter of part two. For if, as my reading of Freud's text suggests, the authority of the law itself is ungrounded, which is to say that its foundations are only constituted in moments when the problem of representing the subject is violently repressed, then the acts of judicial review which only appear to interpret the law for this subject in fact refound it by reconfiguring the parameters of legitimate identification. In this respect, Derrida suggests that the foundations of legal authority reflect the issues of structurality which are set out in his notion of iteration. The important point here is that it is no longer possible to distinguish the violence which founds a state by defining its political subject from the acts of interpretation which appear only to conserve it. Instead, because they only refer back to the precedent making decisions which link together cases whose interpretive centre is otherwise undecidable, judicial decisions carry their own refounding violence insofar as each case requires that the political subject which legitimates the authority of the decision again be thought. A crucially important part of Derrida's work is therefore that he extends our understanding of violence to the phenomenological mode of presenting the subject through which such interpretive acts as judicial decision-making make their authority present. Putting together Derrida and Heidegger on this point, we can therefore say that it is because the demand for inclusion made by the subject requires

a judicial decision which actually identifies that subject that each case brings both the law and the subject back to their own potentiality-for-Being.

This tendency of the law to refound the identity of its subject in each judicial decision is something which I will illustrate through a reading of Hannah Arendt's political theory, where I argue that the central undertaking is to try to establish the possibility of the non-violent transformation of the public sphere. Here Arendt attempts to maintain a distinction between power, which she argues only appears through acting together, and violence, which she says only applies to situations governed by a means-end rationality. What Arendt therefore tries to identify is a non-political understanding of violence. However, as I illustrate through Derrida's account of violence, it is the violence involved in interpreting something like a written law which is essential for constituting the political subject referred to in her idea of acting together. In other words, because any moment of acting together involves the interpretation of a law whose authorising subject is only identified in and through that interpretation, and because this subject defines the limits of the public sphere, violence is inherent in this acting together. The key point here is that the image of a public sphere acting together is the belated effect of a judicial decision necessitated by the demand for inclusion made by a particular site of exclusion. Thus, the people who act are always singular in their relation to the public sphere and the identification of the "together" is what is at stake in this acting since it defines the terms of political inclusion.

Reviewing the larger body of Arendt's work, I argue that the difficulties present here remain consistent with those found in this distinction. From within the context of her interpretation of both the French and American Revolutions, and her larger historiography of human activity in terms of labour, work, and action Arendt explores the gradual loss of the public sphere as a realm in which free individuals discover their political equality by acting together. As she argues, in the modern world this has been brought about by the ascendancy of those concerns identified with the activity of labour.

Arendt associates this with the appearance of the French Revolution and the introduction of the social question into the terrain of the political. Therefore, it is the extension of labour's concern with social equality into the public sphere following the French Revolution which Arendt associates with a displacement of power by violence. Here the concern for an easier life has supplanted the concern with acting together.

The paradox which therefore structures Arendt's political theory is that she wants freedom to be based upon political rather than social equality. In these terms she must interpret the public sphere as fragile and transient, existing only so long as people act together politically. However, she realises that with the rise of labour and the domination of the public sphere by the social question, a founding Constitution is required to exclude these issues and leave acting together as a permanent possibility. The paradox of course is that the difficulties surrounding the public sphere in the modern age leaves Arendt's strategy in contradiction with her goals. If the public sphere exists only in acting together then guaranteeing this possibility with a Constitution becomes a self-negating exercise, since the one thing which guarantees freedom for Arendt is that there can be no guarantees. In this chapter I go on to look at how Arendt tries to resolve this in the principle of augmentation which she finds in the foundation of the US Constitution, but how she is finally unable to overcome the performative contradiction in the centre of the law which means that augmenting a founding document is inseparable from refounding it.

In the third chapter of this part of the thesis, I examine the practical consequences of the argument that the subject of Justice is produced in and through the practice of judicial interpretation through an examination of the interpretive historicity of the equal protection clause of the US Constitution. It is because there is no centre to this clause, which is to say that, in a manner somewhat reminiscent of Kant's account of the moral law, it only mandates the ideal of equality and leaves its substantive content unrepresented, that the political subject to which it refers has in fact only appeared in the

precedent cases which Supreme Court review has established. The political identity to which equal protection refers has therefore shifted between that produced by a colour-blind interpretation and that produced by using racial discrimination in a positive way. The important point here is that because equal protection legislation directly determines the structure of political representation in the US from the colour composition of Congressional districts to the presence or absence of affirmative action programmes in education and employment, judicial interpretation of the content of the clause is the very act which makes the subject present before the law. Nevertheless, because this remains a particular type of subject rather than the subject *as such* Justice itself remains beyond the scope of equal protection legislation, thereby providing the basis upon which its existing terms of recognition can be critically resisted.

I illustrate this point through a number of examples which together allow me to introduce some of the subject matter of the case study. For although it is apparent that the interpretive transference between colour-blindness and the positive use of race works to efface either white or black racial identity in the representation of congressional districts, it is also apparent that the very terms of this debate works to efface not merely the equal protection of ethnic minority groups who have found that the judicial interpretation of ethnicity works to artificially limit it to the court's existing understanding of race, but also the protection of multiracial Americans who are reduced to black identity when it comes to questions of racial discrimination by the way in which the "one-drop rule" has left both the courts and governmental administration with a purely monological understanding of racial identity.⁸² The same situation is also apparent in the case of gay men and lesbians, where the conflation of speech with conduct in such precedent setting decisions as *Bowers v. Hardwick* works to deny the possibility of equal protection. As these examples indicate, the moment when the subject is produced as a political identity is the moment when judicial interpretation and decision defines the limits of Justice as such. However, the point which brings both of the previous essays together is that because this decision is

only made by referring back to precedent cases whose own interpretive centre is undecidable, judicial interpretation of equal protection legislation is in fact involved in a constant process of refounding these limits. Thus, each case represents the possibility of critical resistance because it reopens the question of Justice. In this respect, we can start to see the basis upon which Derrida has recently suggested that the fact that the law is deconstructable might be a stroke of luck for both politics and indeed all historical progress.

In part three I look at the question of group identity and group rights and explore how group identities are produced in and through the assumptions made by liberal political theory. Here it is the way in which liberal ontology grounds rights in the identity of the victim which is crucial to understanding how group identities are produced. That is to say, it is the way in which liberal theory associates rights with the demand that groups represent themselves as *just* the victim which is most closely interrogated by the question of group identity. In other words, when groups come into self-presence through the granting of equal protection before the law, is it possible that they can, as liberals such as John Rawls imply, be just the victim? I approach this question on two fronts, one from within liberal theory itself through a critique of the assumptions about the victim which I argue are at work in Rawls' political theory, and the other from the way in which this presumption is carried over into theories of group rights through the metaphor of "authenticity" as this is deployed by writers such as Charles Taylor as well as more radical thinkers such as Iris Marion Young.

This critique of liberalism is also present in the work of feminist writers who look at the issues which appear for female identity at the intersection of gender and race, as well as in the work of radical multiculturalists who look at the opposite question: the intersection of race with gender as well as a number of other subject positions. The point here is that because the right to have rights as a woman or, for example, as an Asian American, is structured within dominant assumptions about race as white and gender as

male, women of colour are forced to repudiate their racial identity and Asian American women are forced to repudiate their gender. The point here is that for a group to be "authentic" it must represent itself as just one thing. In other words, it is because being equal before the law requires a monological reduction of subjectivity within liberal theory that it is never possible to be *just* the victim. Instead, the identity of the victim is always overdetermined by the identity of the oppressor, as black women are forced to repudiate their blackness and as Asian American women are forced to repudiate their gender.

It goes without saying that this arises because the subject which decides in Rawls' original position, the one who imagines what it would be like to be the victim, is irreducibly singular and socially dominant and therefore always white and male. (Though the question is not raised at this stage, we might also add that he is always heterosexual.) Therefore, in order to have rights, women must represent themselves as white and racial and ethnic minorities must show their male gender. As I suggest through a reading of the work of William Connolly and Slavoj Žižek, this tension between the victim and the oppressor marks out a number of other aporias in liberal theory, including that between tolerance and intolerance and justice and injustice. So, for example, it is because her blackness has to remain repressed within her right to equality as a woman that the black woman remains a site of intolerance and injustice even as liberal views of justice grant her toleration and equality.

These criticisms of liberalism, however, are I argue already at work within the area of post-colonial criticism, which is what I take as my point of intervention into this question of group identity and liberal theory. As I try to show, it is the way in which writers such as James Clifford, Stuart Hall, and Homi Bhabha refocus the question of cultural identity away from Newtonian assumptions about movement (which focus on fixed understandings of space) and towards a view which sees movement as the primary constituent of identity, which allows us to challenge the distinctions which writers such

as Taylor and Young make between dominant and minority cultures and authentic and inauthentic cultural minorities. As Clifford, Hall, and Bhabha show through their respective use of the metaphors "traveling cultures," "diaspora," and "hybridity," it is impossible to finally decide what is central and what is marginal when it comes to the question of cultural identity.

The possibility of using these narratives as the basis for a critique of liberalism is provided by Gayatri Spivak through her account of the "subaltern subject-effect." As Spivak argues, it is because the centre still continues to come into play even within the margin (something which she indicates through the term "post-colonial woman-space," but which we have already encountered through the issues of feet-binding, sati, and clitorrectomy) that the subaltern is constantly reinscribed in the practice of critical resistance. That is to say, it is because the repudiation of at least one of the ways in which one might speak is internal to the possibility of constituting critical resistance to domination, that domination persists within resistance and the subaltern never finally gets to speak. For liberalism, the importance of this is that we never finally uncover who the victim is since this identity always resides in the moment of unspoken repudiation which turns any site of oppression into one of critical resistance.

Parts two and three therefore give a particular focus to the critical reformulation of the question of subjectivity with which I began the thesis. In doing so, they provide the bridge through which this question can be examined in my case study. In this respect, it is because they maintain the focus which this reformulation places on the relationship between resistance and repudiation, that what they share is a concern for the violence which ensues when we argue that the political-legal subject cannot be represented. On the one hand, part two explores this by considering what takes place when legal interpretation cannot represent the subject of Justice. On the other hand, part two takes up the same concern when it takes the work of Gayatri Spivak as an intervention into liberal theories of rights and argues firstly that, contrary to John Rawls, the victim cannot

be represented, and then secondly, contrary to Charles Taylor, that an "authentic" group identity cannot be represented either. However, marking a certain difference between the critical focus of these two parts, the point which I also want to make here is that if it is the impossibility of actually representing the law as the idea of Justice which ensures that minority groups will appear as sites of critical resistance, then it is the demand made by liberal theorists of groups rights such as Taylor and Young that they represent themselves as an "authentic" subject which also ensures that this resistance will be inseparable from an equivalent moment of repudiation.

My case study in part four therefore considers how we might use these insights into the question of subjectivity to explore how a group is produced as a political subject in and through its demand for the equal protection of the law. As the focus for this question, I look at the recent demand made by many multiracial Americans to have their group identity recognised on the next census. As we have seen, because it always takes place within the exercise of power, a moment of critical agency such as this contains two elements which are internal to each other: resistance and repudiation. To simplify matters a little, the first chapter of the case study focuses on the first movement, resistance, where it is the relationship between multiracial identity and the black civil rights movement which is examined, while the second focuses on repudiation, where it is the constitution of multiracial Americans as a group identity within dominant American cultural and legal norms which is examined.

Therefore, the case study is essentially about the politics which are involved as multiracial Americans have come into presence as a group identity. On the one hand, this focuses on their critique of the monological categories within which racial identity has been traditionally represented on the US census. The debate surrounding their demand for their own category denoting mixed-race has therefore focused on the tension which this creates with black identity, since the historical effect of the one-drop (which dates from the Jim Crow laws of the 1920's) has been to designate anyone with one-thirty-

second or more of black ancestry as automatically black. The point here is that the recognition of multiracial identity is seen by the black civil rights movement and the American left in general as indirectly collaborating with the attempt by the American right to dismantle affirmative action. Thus, the central concern of the recent struggle between these groups has been the question of "passing" and the interpretive significance of the one-drop rule. That is to say, where the one-drop once meant that no one of mixed-race could be white, now it is deployed by the left to argue that they can only be black. In this way, the black left is attempting to head-off what it calls "rainbow saboteurs" who it believes want to use the multiracial category to pass as something other than black.

However, as I noted above, because of the structure of repudiation required to constitute resistance, looking at this question simply in terms of a multiracial opposition to monoracial categories of identity fails to fully appreciate the cultural and legal limits to identifying with the name multiracial. In other words, it also has to give an account of those identifications which must be repudiated if multiracial resistance to monoracial intolerance is to lead to recognition on the census and other state and federal documentation. As I will suggest, in order to understand this we need to appreciate how the representation of multiracial Americans in the press reports of the census issue works to reinscribe most of the dominant values of American identity even as they challenge some others. Therefore, readers are left with the sense that while they challenge the monoracial logic of American identity they simultaneously reinscribe the values of individualism, education, parental responsibility, family solidarity, and above all heterosexuality, all of which work to leave the traditional margins of this identity, blacks, single mothers, and gays and lesbians, in place.

The issue of sexuality is, I suggest, especially important in the representation of multiracial Americans since the move to recognise mixed-race identity can be interpreted as essentially the completion of the programme set out in the Supreme Court's ruling in the case of *Loving v. Virginia* to recognise the marriage of people from different racial

backgrounds. The point here is that the opposition to mixed-race marriage in 1967 was based on arguments ranging from those suggesting that it was an offense to God to those prophesying birth defects and sterility. As this second point suggests, what is in fact at stake in the recognition of multiracial identity is the most legitimate form of *heterosexual* relationship, monoracial or multiracial. This point is made very clear if we review the efforts made by gay and lesbian couples to have their relationships recognised as a legitimate form of marriage or to adopt the children which would allow them to define themselves as a family. Here these efforts have drawn upon both the recent anniversary of the Loving decision and the recognition on the census of multiracial identity. Such demands for inclusion, which I briefly document, therefore serve to highlight the limits within which multiracial identity can be thought in American political culture.

In the second part of the case study I support this analysis by reviewing those press reports of multiracial Americans in leading US news publications to which I referred above. Building upon the technique of reading at the intersection of photograph, caption, and text used by David Palumbo-Liu in his analysis of the representation of Korean-Americans during the Los Angeles riots, I show how interracial families have been similarly appropriated in the mainstream American press to police the principal boundaries of American identity. Like the Korean-Americans represented in the reports of the LA riots, these interracial families and their multiracial children are consistently depicted as representing American values of individualism, education, parental responsibility, and heterosexual family units. In other words, interracial families and the identity "multiracial" are put to work to relieve white, middle-class, heterosexual anxiety about illegitimacy, welfare mothers, deadbeat dads, the spread of Aids, and abortion rights.

It is in this larger and more ambiguous context that I suggest we need to read the claim by multiracial groups that they have the ability to provide the "stable core" around which American ethnic pluralism can be built, since the very least of the things which

ought to be questioned here is the assumptions about a centre which organises the word pluralism. Rather than as a stable core, as I have tried to show here, we need to understand multiracial identity in terms of the cultural and legal limits of identifying with this name and the highly ambiguous effects which it produces. Perhaps the key ambiguity here is that where equality in both the law and in liberal political theory requires that monological reduction of subjectivity we noted earlier, and where in the case of American cultural values state laws and judicial precedents deny inclusion to identities which are non-heterosexual, multiracial resistance to their political exclusion by the system of racial representation on the census only takes place by presupposing the repudiation of their homosexuality by mixed-race individuals who are also gay and lesbian.

In the conclusion I take up the issues which surround this identity, and in particular explore the strategies of critical resistance which might be open to them. Within this, I look at the relationship between coming out and passing as critical strategies for subaltern subjects, and argue that passing must necessarily persist as a critical strategy because it is the only form of resistance open to a subject who is prohibited from speaking, and we know the victim never finally gets to speak, that is, to come out. As I will suggest later in the thesis, it is this chapter which really justifies the approach which I have taken here. That is to say, since it relies on the assumption that to be politically significant a political identity must be representable, a purely empirical approach would not be able to identify this group whose significance lies in the fact that it is its very unrepresentability which produces multiracial Americans as an identity which can be recognised in the American public sphere.

As readers might have already gathered, there are almost no points of reference within any of the existing literatures on multiracial Americans which would allow me to situate the analysis I am undertaking in this thesis. Generally speaking, this literature divides across three disciplines: social psychology, American literature, and the law. The

first is by far the larger and focuses on the psychological impact of social marginality experienced by both adults and children of mixed-race. This literature takes its referent from the work of Robert Park in the early part of this century out of which was developed the theory of "marginal man." In contrast, more recent work explores the progress which has been made towards a wider social acceptance of multiracial identity. The marginal man theory largely complements the focus within American literature on the life history of the "tragic mulatto" and the related question of passing. The third approach found in the work of a few legal scholars is very small. I found in fact only five journal articles which either centrally or peripherally addressed this question. As we might expect, they take as their point of reference the relationship between racial identity and the equal protection clause and explore the effect which the recognition of multiracial identity would have on the census and affirmative action. I briefly review these articles in chapter six and take up the question of passing in chapter seven and then again in the case study. However, since I found the social-psychological literature totally irrelevant to the questions I am raising, I have decided that a more specific account of this would serve no practical purpose here.

As readers will also have become aware, the main intellectual influence on my work has been Derrida, though in many cases the terms through which I chose to express certain of Derrida's insights have been the language found in Heidegger's existential analysis of Dasein. In part, this is done in an effort to situate Derrida for readers who may have read Heidegger but not Derrida, but more important is the way in which Heidegger's basic concern, the meaning of the question of Being and the project to recover thinking as the possibility of appearing into Being, also animates Derrida's critical focus, though not in a way which reduces Derrida to Heidegger's acolyte. In a sense, therefore, I am pursuing Heidegger's critical project along Derridean lines, and in the chapters which follow I shall identify the point at which we can find this critical difference between Heidegger and Derrida. As I shall suggest, we can read Derrida through the language of

Heidegger so long as we remember to interpret the "there" which Heidegger describes in his account of Being-there in terms of Derrida's understanding of the trace. It is therefore the fact that the "there" marks the site of a non-decisive repudiation rather than simply a context of Being-with which is important, since it is this which provides the basis for the reworking of the psychoanalytic account of critical agency along less restricted lines. At the same time, though, this reworking would not obtain the political significance it has without the realisation that Derrida's more democratic view of agency remains within Foucault's argument that there is no outside to power, for it is this which allows us to explore the exercise of critical resistance within an analysis of how individuals are produced as political subjects.

Beyond Derrida, Heidegger, and Foucault, however, important insights have come from the work of Gayatri Spivak and Judith Butler. Spivak's account of the "subaltern subject-effect" opens up critical possibilities for rethinking our understanding of the victim, the oppressor, and the relationship between identity and the political. Meanwhile Butler's work on psychoanalysis, Foucault, the performative nature of speech, and the productive force of censorship provides important support for arguments made at both the opening and closing of the thesis. Other writers have been important too. The insights of James Clifford, Stuart Hall, and Homi Bhabha into the question of cultural identity have, like those of Spivak, been important in the attempt to critically intervene into the assumptions made by liberal theories of group rights. At the same time, black feminists such as Angela Harris have been important in that they have made similar points by focusing on the intersection of race and gender in female identity. I also relate the issues raised here to those identified by William Connolly when he questions such liberal assumptions as toleration, so that we might take a more critical attitude to the assumption made by liberals that it is possible to identify a political subject who is *just* the victim. What I have tried to do, in short, is to work with a limited number of writers who I believe have made important interventions into some of the questions which I have tried

to raise here, and who can, at differing levels, be related back to the Heideggerian issues and Derridean critique which I have made my point of departure. As one last point, I would encourage readers to pay close attention to the footnotes to this thesis. Sometimes they merely offer textual citations in the traditional sense. However, often I take the opportunity to develop points which either cannot be incorporated easily into the main narrative or have occurred to me later as I have read back over the text.

PART ONE:
SUBJECTIVITY, POWER AND THE QUESTION OF CRITICAL AGENCY

CHAPTER 3

**FROM RESTRICTED TO GENERALISED NEGATIVITY:
PSYCHOANALYSIS WITHOUT RESERVE**

In this chapter I want to focus on how we construct our understanding of subjectivity. As readers will immediately see, I am departing from the ego-centred subject deployed in liberal political theory. This is because I believe that the issues surrounding subjectivity raised by today's identity politics require us to formulate an understanding of critical agency which stretches our imagination beyond simply the exercise of a rational free will. As we will see in part three, the idea that critical agency resides in a free will requires us to abstract the political subject from its relationship to the exercise of power, something which John Rawls for example attempts to do through his use of a "veil of ignorance" to construct an original position. However, as we explore the issues for political identity which appear at the intersection of race and gender or race and sexual orientation, we will hopefully see that it is the lack of origin to the subject which means that it is always within the exercise of power. In this respect, it is because the subject is never a subject *as such* but rather is produced as a particular kind of subject through the repudiation of one of these subject positions that it is never outside of power. It is because of this need for repudiation in the making-present of the subject, therefore, that a more rigorous account of critical agency is necessary if we are to understand the implications of identity politics for the concept of subjectivity.

In this respect, the initial turn which I make to Lacanian psychoanalysis is important because it identifies the possibility of critical agency with a site which is outside of the ego. As Lacan implied, first in his analysis of the mirror stage and then in his account of the interplay between the three orders which he believed constitute human cognition - the Real, the Imaginary, and the Symbolic - the freedom which the subject appears to have in exercising its will is in fact a function of the psychic investment which the ego has in certain idealised images which provide it with a sense of imaginary unity.⁸³ The freedom which is signified in the united ego is therefore at best a tenuous accomplishment since it depends fundamentally on the recognition of others.⁸⁴ As Elizabeth Grosz points out in her reading, "Lacan displaces the ego as the central and most secure component of the individual, unsettling the presumptions of a fixed, unified, or natural core of identity, and the subject's capacity to know itself and the world. The certainty the subject brings with it in its claims to knowledge is not, as Descartes argued, a guaranteed or secure foundation for knowledge. It is a function of the investment the ego has in maintaining certain images which please it."⁸⁵ In other words, Lacan shows how freedom is limited by the alienation of the will into the desire of another. Specifically, the autonomous subject is in fact a psychic projection which is built upon a prior internalisation of otherness, something upon which its capacity for agency then depends.⁸⁶ Thus, if the child first gains its sense of ego identity in the mirror stage by incorporating the image of the mother, then as Grosz points out this means that "Its identity is thus always incomplete, dependent upon the other. The other is thus not simply an external, independent other, but the internal condition of identity, the core of the self."⁸⁷

It is therefore because the recognition of the other is basic to the stability of the ego from the mirror stage through the oedipal crisis and beyond into adult life that, rather than being free, the will is fundamentally entrenched in a structure of narcissism and jealousy. For if the Real represents that fullness experienced by the child through

constant maternal attention, it is only with the gradual realisation by the child of its separation from the mother, which is signaled firstly by the mirror stage and then by the intervention of the Father during the period of oedipal desire, that the child comes to depend upon firstly Imaginary identification with the mother and then the Symbolic recognition of others in more adult social contexts.⁸⁸ It is therefore in adult life that narcissism and jealousy come fully into prominence in the relations of the ego, since it is here that the Imaginary carries into each of these social contexts the psychic imprint of an ideal ego left by its earliest experience of maternal nurturing and for which it seeks to create and have recognised substitutive ego ideals.

Because of this Lacan argued that the free will which we appear to exercise in our adult demands for objects and things from others is subverted by this other idealised scene to which they referred.⁸⁹ In this sense the will is something which can never really be free because freedom demands something from the other which the other cannot give: that is, itself - or rather that total negation of selfhood which would reproduce the feeling of desire towards the child expressed by the mother. In this respect, the psychic imprint of maternal desire, and the memory of unmediated Being which accompanies it, leaves a bar between the subject and the Symbolic-social order which forever prevents the subject from being able to respect the freedom and autonomy of others.⁹⁰ In other words, because the Real is before everything, before adult life and Symbolic relations, it prevents the final integration of the subject into society.⁹¹ As a result, this imprint left on the psychic life of the subject by its initial period of maternal attention can be said to constitute a permanent site of critical agency through which each individual comes to resist the different identity codes and cultural norms through which society would attempt to recognise and totalise it as a subject.

However, while this account of critical agency represents an important point of intervention into the way in which we need to conceptualise the acts of resistance undertaken by today's intersecting political identities, which it does by drawing attention

to the way in which their moment of critical agency is derived from the attempt to recover a repudiated identification, my argument in this chapter is that in order to follow through with this we need to take the more radical step of reworking the Lacanian theory of the subject along the lines set out in Derrida's aporetic reading of difference. As we shall see, this will not entail a rejection of psychoanalysis, but rather a reformulation which resituates Lacan's understanding of resistance within Derrida's concept of undecidability. In particular, I turn to Derrida in order to provide a less essentialised account of the unconscious as a site of critical agency, and in doing so suggest how we need to reassess the relationship which Lacan constructs between his orders of the Real and the Symbolic so that, contrary to Lacan, the Real is relocated within the heart of the Symbolic itself rather than outside it in the psychic imprint of maternal attention. As we shall see, a Derridean critique of psychoanalysis reveals the privileging of heterosexuality which takes place in Lacan's account of the Real. Thus, a less essentialised reading of the unconscious allows us to see the Real not as a permanent structure which resists oppression merely in the repetitive chant of heterosexual difference, but instead as a mobile, variable, and indeed iterative site of resistance and repudiation which can respond more positively to alternative sexual identifications. Lacan's insight into the subversion of the ego-centred subject by the prohibition of incestuous desire therefore remains important in understanding how critical agency takes place. However, it needs to be set in a context in which the otherness which constitutes the prior possibility of the self is not already inscribed with a determinate sexual identity.

Within this there is a necessary attempt made to recover Foucault's insight into the totalising nature of modern power from the psychoanalytic criticism of writers such as Joan Copjec. In this respect, it is Foucault's argument that because it is essentially productive there is no outside to power which allows us to bring the formation of critical agency back within the terrain of the Symbolic where it can be subject to the possibility of alteration. The important connection which therefore needs to be drawn between

Derrida and Foucault is that when read through Derrida's understanding of difference productive power locates the Real within the Symbolic, so that, paradoxically, the totalising nature of power is then the very thing which allows oppression to be resisted. In other words, it is because the Symbolic has its foundations in difference that there is no outside to power. Instead, the exercise of power constantly reproduces those sites of critical agency which constitute the on going possibility of its subversion. In broad terms, therefore, the problem with Lacanian psychoanalysis is that it follows a long line of critical thought in retaining a fetish for the Real, which it then inscribes as a determinate site of resistance or what Derrida would call a final marker for deconstruction. It is such privileging which I therefore attempt to unsettle and rework in this chapter. As I noted above, this is important because it then allows us to understand the context of critical agency in which today's identity politics is taking place.

Much of what constitutes the critical terrain of identity politics was discussed in chapter one when we looked at the contribution which writers such as Lata Mani and Chandra Mohanty have made to the politics of location. Here I will attempt a slightly more formalistic presentation of this which is consistent with the Derridean terminology which I will introduce as the chapter goes on. In this respect, we could say that identity politics expresses the idea that the subject *as such* needs to be replaced conceptually by the subject as "subject positions," a replacement which gains its justification from the fact that Derrida's grammatology suggests that we will find them arranged in a relationship of non-identical sameness, much as Derrida indicates that the signified of difference - the possibility of its existing *as such* - is arranged in an "irreducible contradiction" between difference and difference. Rather than occupying a single signified, therefore, the political subject is instead "produced" through the process of representation in which one of these subject positions comes to be repudiated in favour of another. In this respect, the subject is always re-presented as a subject through the essentialisation of one of these subject positions, so that the task of critical thinking is to

explore not only which codes of identification control the representational process but also how it works as a system of oppression by censoring the field of subject positions with which individuals can identify. This is something which I take up in the case study. To fully understand this though, it is necessary to first raise the question which we are raising here of how resistance to the censor comes to be staged, as well as the political consequences which follow from this with respect to such basic concepts as freedom and domination.

As a point of reference for this I take Foucault's provocative suggestion to psychoanalysis that "nothing is repressed." However, where psychoanalytic critics like Copjec respond to this by emphasising the distinction between the Real and the Symbolic, I attempt to use the undecidability at work in this phrase which is revealed by a Derridean reading to provide an opening onto a more critically enabling understanding of resistance. As I will suggest shortly, reworking Lacan through Derrida charts a path from a "restricted" to a "generalised" account of negativity. The limitations of Foucault's approach is therefore not that power is totalising but rather that he fails to see that productive power does contain a necessary moment of repression, though contrary to psychoanalysis this is not the repression of an experience which is prior to the exercise of power but rather a repression which is internal to the possibility of deploying power itself, something which a Derridean reading of the phrase "nothing is repressed" will hopefully illustrate. The reason why power might be resisted is therefore precisely because undecidability remains internal to its totalisation in the presencing of the subject; that is to say, undecidability provides the minimal level of difference which establishes the (im)possibility of repression.

As is commonly known, Foucault rejected the psychoanalytic theory of repression, arguing that subjects are created not through the prohibition of an existing pleasure but by encouraging them to speak freely about pleasurable matters such as sex, thus creating the subject as, precisely, a desiring subject. This critique in turn forms part

of Foucault's wider analysis of power, one which sees resistance as the basic structure which allows power to be exercised. Thus, by resisting a particular discourse about sexuality, Foucault argues that individuals themselves provide the mechanism through which subjects are constituted. In this respect, the theory of repression is rejected on the basis that all negativity is internal to the system of power itself. When we believe we are being repressed we merely assume that there is a truth behind power and so resist. However, the subject positions which we articulate as sites of resistance in turn only provide another opportunity for us to be constructed as subjects. As a result, Foucault argues that the relationship between freedom and domination is always ambivalent. As he suggests in one of his later interviews, "nothing is ever good or bad, but everything is dangerous."

In contrast, psychoanalytic critics such as Joan Copjec have responded that as a positive identity the subject depends upon a prior negation. In this respect, Copjec argues that the oedipus complex provides this account of negativity which Foucault leaves out. Therefore, in contrast to Foucault, psychoanalysis argues that it is only in the Real (where the infant experiences the sense of fullness which accompanies the mother's unmediated attention) that nothing is repressed; in contrast it is in the Symbolic (which as Lacan's metaphor for society is centred around the law of incest prohibition, the intervention of the Father and the authority which he symbolises by having a prior claim on the desire of the mother) that the subject appears as a sign of repression. The psychoanalytic subject is thus constituted as the effect of an original negation, the separation from the mother which individuates the child as an object for other subjects. In this respect, Copjec argues that what repression produces is not the subject who desires, as Foucault argued, but the subject who desires not to be a subject. In other words, it produces a subject who seeks to restore its primary relationship to the mother, and who therefore sees itself not as a subject who desires but instead simply as the object of her desire. As a result, where Foucault interprets resistance in terms of multiple subject positions which stand opposed

opposed to one another, Copjec argues that the subject must be seen as divided within itself. However, while highlighting the negativity which underlies the exercise of critical agency, a number of writers including Derrida, Jean Baudrillard, and Judith Butler have argued that what psychoanalysis offers in its account of resistance is really only what I will call a "restricted negativity," one in which the location of critical agency remains tied to one privileged moment of difference and where resistance therefore reproduces a metaphysical essentialisation of subjectivity.

Against this, these writers attempt to rewrite the psychological limits to identification in terms of what Baudrillard at one point refers to as "generalised negativity," in which the division internal to the subject is replaced by the more critically challenging concept of "overdetermination." The point here, as I will try to show, is that psychoanalysis brings from traditional metaphysics the assumption that Being is somehow distinct from nothing. Thus, the divided subject of psychoanalysis is constituted as such in the substitution of Being for nothing which takes place with the intervention of the law of the Father (the father whose appearance indicates to the child that incest is prohibited) into the infant-mother relationship. This infant-mother dyad stands for nothing since the direct enjoyment of the mother experienced there by the child represents the absolute impossibility of Being. At this stage in infant development, then, the failure of the child to individuate from the mother indicates that the question of Being has not yet been posed. Where the enjoyment of the mother's attention therefore constitutes the absolute impossibility of Being, the intervention of the Father designates the repression of nothing and the passage of the infant into Being; that is, the constitution of the child as a subject. (Note that when the child becomes a subject this is because it recognises itself as an object. That is, the subject is an objectification insofar as it has to be represented. The point here is that in the period before the oedipal crisis the question of representation, who the child is, has not been raised.) It is therefore because nothing does not refer to nothing *as such*, but instead to a particular something, that is, to the

negation of Being in the desire of the mother, that the Lacanian subject experiences its relationship towards Being as one of "lack": the lack of the mother or direct enjoyment of the other. Within this structure a restricted negativity therefore appears at two levels. On the one hand, the intervention of the Father introduces the law as a point of reference for Being. In this respect, the symbolic authority which is present in the law is always prior and external to its constitution of the subject. On the other hand, negativity is restricted in the sense that the subject constituted by the Father's intervention is limited to a closed structure of heterosexual difference, one to which other sexual differences then refer merely as symptoms of perversion. Taken together, then, both points suggest that the law of incest prohibition is a limitation on the scope within which particular beings can appear in their Being.

In contrast, Derrida has argued that the subject does not begin with the repression of nothing but rather, as the word *différance* has served to indicate, with the repression of undecidability. Consequently, rather than being divided by a single moment of prohibition there are instead multiple and intersecting points of inclusion and exclusion, what we might call "enabling prohibitions," which then leave the subject which is produced essentially overdetermined. The problem with psychoanalysis here is that by arguing that the Real constitutes a permanent site of resistance outside of the Symbolic it then has to represent this site, which it does through the theory of the incest prohibition. This in turn limits the scope within which critical resistance to the Symbolic can be exercised to the reinscription of heterosexuality. However, without a privileged referent like the prohibition of incest to hold onto heterosexual difference can no longer define the parameters of negativity, with the result that it represents an inadequate account of the basis upon which critical agency is exercised. Instead, rather than representing the moment of repression which defines the subject, the heterosexual difference at work in the desire for the mother itself becomes a symptom of psychoanalysis' own overdetermination. In other words, it needs to be read as a repression of the inability to

find a non-political vantage point from which to represent the field of legitimate identifications.

This then allows us to reexamine Foucault's suggestion that "nothing is repressed." Not because all negativity and resistance is always absorbed into the positive constitution of the subject, but rather because the subject's internal relationship to what divides it cannot be reduced to a single moment of difference. Therefore, where Foucault argues that nothing is repressed and psychoanalysis argues that nothing is repressed in the Real but only in the Symbolic, what both fail to see is the double inscription at work in the phrase which marks its productive articulation with an internal repression. As I will argue shortly, the crucial thing about the name, word, or phrase is that its Being or signified is always configured through a "non-decisive repudiation," and while this means that power is always productive clearly it does not mean that there is no repression.

In this respect, we come to the fundamental criticism of psychoanalysis which I believe needs to be made if we are to achieve an account of critical agency and resistance which can be applied to the issues raised by today's identity politics. That is to say, the contribution of writers like Derrida, Baudrillard, and Butler here has been to show that psychoanalysis itself is founded upon a moment of repression, one in which the overdetermined subject which experiences undecidability at its origin is repressed by the subject whose oedipal origins presupposes a heterosexualisation of desire. In this respect, it is the undecidability of sexual identity which psychoanalysis represses when it represses the root indeterminacy of the phrase "nothing is repressed." In other words, it represses the fact that the intervention of the Father - the inscription of the Symbolic law - privileges a particular sexuality which then carries political implications insofar as this allows a determinate identity to return to (the) centre (of) theoretical discourse as the foundation for analysis. Taken on its own terms, therefore, the psychoanalytic approach to subjectivity merely reinscribes the metaphysical ontology which it wants us to believe it challenges. Another way of putting this would be to say that psychoanalysis itself

constitutes a system of domination which produces the subject by censoring the field of subject positions with which identification can be made. Challenging this schema has obvious repercussions for our understanding of critical agency and political resistance, one where Derrida's performative understanding of the Symbolic relocates the formation of the unconscious (ie. the moment of the Real which informs our critical agency) within the "structure" of the Symbolic itself. That is to say, a structure where the undecidability of the phrase "nothing is repressed" ensures that critical agency becomes mobile rather than embedded in resistance to a highly singular type of prohibition. It is then on this basis that we can better understand the acts of resistance undertaken in today's identity politics.

In relation to other contemporary work being undertaken in this area, this chapter brings into play what I think are the two crucial aspects of Butler's critique of essentialist theories of feminism: her attempt to explore the psychoanalytic limits of Foucault and her attempt to deconstruct the ontological commitments of psychoanalysis. This second aspect is developed in detail in Bodies that Matter and is discussed later in this chapter. Here we will reflect on the significance of Butler's suggestion that "It seems crucial to question whether resistance to an immutable law is *sufficient* as a political contestation of compulsory heterosexuality, where this resistance is safely restricted to the imaginary and thereby restrained from entering the symbolic itself."⁹² Within this, I will attempt to show how we might reconfigure our understanding of the Imaginary when it is located within a Symbolic order which is itself decentred.

In contrast, the first aspect is outlined in this text and then taken up as a project in her subsequent work. Thus, in Bodies that Matter, Butler asks "Does Foucault's effort to work the notions of discourse and materiality through one another fail to account for not only what is *excluded* from the economies of discursive intelligibility that he describes, but what *has to be excluded* for those economies to function as self-sustaining systems?" In this respect, she suggests that "The logic of this operation is to a certain extent

psychoanalytic inasmuch as the force of prohibition produces the spectre of a terrifying return." As she then adds, "Can we, then, turn to psychoanalysis itself to ask how the boundaries of the body are crafted through sexual taboo?"⁹³ The subsequent text which then takes up this question is The Psychic Life of Power: Theories of Subjection. As Butler notes here "I am in part moving towards a psychoanalytical criticism of Foucault, for I think that one cannot account for subjection...without recourse to a psychoanalytic account of the formative or generative effects of restriction or prohibition." This in turn "will entail the reemergence of a Foucaultian perspective *within* psychoanalysis."⁹⁴

In many respects I therefore see this chapter as an attempt to build upon Butler's work, both by drawing on some alternative literatures which she does not consider such as the critical intervention which the psychoanalytic critic Joan Copjec has made into Foucault's work and the contribution which Jean Baudrillard's work, including his account of transvesticism, makes to decentering the psychoanalytic centering of the Symbolic, and by distancing myself from what I believe is the one problematic move which Butler makes in her reading of Foucault - her attempt to ascribe the same deconstructive move which Derrida makes in his reading of difference onto Foucault's account of power.

In contrast, I am more inclined to agree with Gayatri Spivak when she suggests in her recent work that important Foucaultian phrases such as the idea of a "moving substrata of force relations" were only worked through an understanding of historical necessity and not difference. As Spivak puts this, "I cannot find anywhere in Foucault the thought of a founding violence. To quote Marx where one shouldn't, Foucault always remains within the realm of necessity (even in the clinamen to his last phase) whereas Derrida makes for the realm of freedom, only to fall on his face."⁹⁵

This last comment on Derrida aside, which I think is debatable since Derrida would be unlikely to be seduced by the metaphysical notion of freedom which Spivak is ascribing to him here, the point here - the one which I have been aiming at during my

introductory comments to this chapter - is that in contrast to Butler's position a Derridean intervention into *both* Foucault and psychoanalysis is necessary if resistance to power is to be located within the exercise of power itself, a move which as Butler realises is required if resistance is to be truly destabilising and transformative. In other words, Foucault can only "re-emerge" within psychoanalysis if his account of power is first subjected to a Derridean critique, the one move which I believe is absent from Butler's critical analysis. Instead, she appropriates Derrida as the basis for her reading of Foucault and thus reduces what needs to be a three-sided analysis - Derrida, Foucault, and psychoanalysis - to a two-sided one - Foucault and psychoanalysis. In recovering the three-sided analysis, I therefore attempt to provide a larger context in which we might both continue yet in some sense historicise Butler's intervention into the question of subjectivity.

Another way of stating the difficulty which appears in Butler's approach is to say that without a Derridean intervention into Foucault, Foucault becomes both that which is in need of psychoanalytic criticism and the point from which a critical intervention into psychoanalysis can be made. In other words, by not conceding the need for a Derridean reading of Foucault, Butler places Foucault in the position where he is forced to represent an account of the Symbolic as both a closed system resistant to the exercise of critical agency and a decentered system which extends the scope of that critical agency. In this respect, we might contrast the statements by Butler quoted above from Bodies that Matter with the following, also from that text, where she suggests that "Generally, Foucault understands the process of signification that governs juridical laws to exceed their putative ends; hence, a prohibitive law, by underscoring a given practice in discourse, produces the occasion for a public contest that may inadvertently enable, refigure, and proliferate the very social phenomenon it seeks to restrict."⁹⁶

The problem here is that the very thing which decenters the Symbolic is the overdeterminations at work in the subject which centres it. Because of this Butler is

forced to alternately locate the subject outside of Foucault's account of the Symbolic when she is criticising his failure to properly account for critical agency and then silently to reintroduce it into his account of the Symbolic when she wants to argue that for him juridical laws "exceed their putative ends" since "the occasion for a public contest" in which these ends are exceeded is "the subject" itself in its unrepresentability. In taking up these problematic moments in Butler's work, I am therefore attempting to make explicit the central role which Derrida has to play (in both senses of this term) if the kind of intervention which she has made into the question of subjectivity is to remain critically coherent.

(1) Foucault and Psychoanalysis

As readers will hopefully have gathered, the nature of the topic which I am addressing in this chapter necessitated a rather lengthy introduction. In this section I want to begin to look in more detail at some of the arguments outlined there. In particular, I want to focus on giving a more detailed account of Foucault's critical project, especially his understanding of the subject and power and their relationship to sexuality and the discourse of repression, as well as on the criticism which psychoanalytic critics such as Joan Copjec and others such as Wendy Brown have made of this. The refutation of this criticism then comes from the attempt to rework the psychoanalytic model of the subject along more Derridean lines which comes in the subsequent section. This recovers the importance of Foucault's insight into the totalising nature of modern power at the moment when what we might call Derrida's "radical phenomenology" pushes our understanding of resistance beyond the heterosexualisation of agency which organises the theory of the incest prohibition. However, in marking a certain distance between Derrida and Foucault (that is, the suspicion which I referred to earlier that Foucault himself had not reached the critical position figured in Derrida's reading of difference) I reemphasise

that although resistance is never outside of power, critical agency depends upon the constant presence of the kind of repression to which the word difference is always gesturing. In other words, I shall argue that both critical resistance and abject repudiation are mutually constituted in the production of the political subject.

Foucault's analysis of the repressive hypothesis takes place in the later part of his research when he considers how the self is constituted not merely as an object, as he did in his analysis of madness, but as a subject, as he did partly in his analysis of criminality and then more especially in his account of the sexual revolution of the nineteenth century and his more wide ranging genealogy of ethics, especially the Western practice of confession, which came right at the end of his career. In these later studies he links the idea of a subject which desires to discover the truth about itself to those wider questions concerning how power is exercised which occupied the earlier work.⁹⁷

Foucault at times embraces these analyses within what he calls the problem of "government" as it appeared in Western societies from the sixteenth century onwards.⁹⁸ As he stressed, this was not government in the sense of maintaining the sovereign authority and territorial integrity of the state. Instead, it served to denote a much broader rubric of concerns, the central focus of which was probably the problem of population as it emerged in the post-Westphalian era of *raison d'état*. It was therefore through the historical concern with ensuring a stable and healthy population that Foucault explored the extension of disciplinary society from its specific sites such as the asylum or the prison to the lives of individuals within the social body as a whole. Foucault describes this shift in terms of bio-power and suggests that it raises the question of bio-politics, which as the name indicates involved political intervention into the process of reproducing the body as a socially useful instrument.

Thus, in his analysis of the sexual revolution his rejection of the repressive hypothesis is based upon the observation that the need to deal with the problem of population has seen the emergence of a type of power whose operation is essentially

productive rather than repressive. Rather than prohibiting discourse on sexuality and the body, Foucault describes how the law actively encouraged the multiplication of places, theories and identities where and about whom the question of sex was raised. Of course, this was all situated within the increasing advance of the normalising routines of disciplinary society. Thus, where the panopticon was an institutional mechanism designed to make the subject totally visible within the penitentiary, army barracks, schools, hospitals etc., so sexuality was deployed as a mechanism to make the subject totally visible within the social body as a whole.⁹⁹ As Foucault questioned, "Is it not with the aim of inciting people to speak of sex that it is made to mirror, at the outer limit of every actual discourse, something akin to a secret whose discovery is imperative, a thing abusively reduced to silence, and at the same time difficult and necessary, dangerous and precious to divulge?"¹⁰⁰

In this respect, we can appreciate the connection which he made between the incitement of sexual discourse, the practice of confession, and the exercise of power. Like the soul, sex was presented as something of a "disquieting enigma," and it was precisely this enigmatic quality which incited individuals to speak about it. As Foucault put it, "What is peculiar to modern societies, in fact, is not that they consigned sex to a shadow existence, but that they dedicated themselves to speaking of it *ad infinitum*, while exploiting it as *the* secret."¹⁰¹ As a result, it was through the incitement to discover the enigma of their sexuality that individuals were made visible as specific sexual identities. Thus, Foucault maintained that power did not have "the effects of the taboo." That is to say, "It did not set boundaries for sexuality; it extended the various forms of sexuality, pursuing them to lines of indefinite penetration. It did not exclude sexuality, but included it in the body as a mode of the specification of individuals."¹⁰²

Within this, the crucial area which Foucault identified was the specification of perversion in sexual discourse. From his earlier study of criminality and the prison he had realised that power operates by producing resistance which is then reabsorbed into

society through an extension of discipline. As a result, he did not interpret the multiplication of sexual perversions as "a mockery of sexuality taking revenge on a power that has thrust upon it an excessively repressive law."¹⁰³ Instead, he interpreted these perversions as an effect of power itself. As he argued, "it is through the isolation, intensification, and consolidation of peripheral sexualities that the relations of power to sex and pleasure branched out and multiplied."¹⁰⁴

Taken overall, Foucault's account of subjectivity therefore proceeds along two axes: the analysis of how the self is constituted as an object which occupied much of his early work and then how it constitutes itself as a subject. Indeed, as we shall see, the crucial breakthrough made at this time was to see that the two axes were interconnected. As he noted, he had realised that the goal of his work had really been "to create a history of the different modes by which, in our culture, human beings are made subjects."¹⁰⁵ In doing so, he confirmed that his reworking of modern power as productive was an important but ultimately secondary part of his critical enterprise. That is to say, he wanted to stress that power is only observable in the acts through which subjects are constituted. As "the actions which structure the field of other possible actions," Foucault therefore argued that power is not inside or outside the self but rather something which works through individuals as they are constituted as subjects and objects. As he suggested, "This form of power applies itself to immediate everyday life which categorises the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth upon him which he must recognise and which others have to recognise in him. It is a form of power which makes individuals subjects."¹⁰⁶

Thus, Foucault refers to "the moving substrate of force relations which, by virtue of their inequality, constantly engender states of power."¹⁰⁷ As such a relation of forces, power is manifested in the double movement of differentiation through which discourse constitutes the subject as a total identity in and through the process of individuating him. As something which imposes "a law of truth" upon the self, the practice of individuation

therefore forms part of what Foucault understands by government. As we have seen, this does not refer merely to political structures or the management of sovereign territory. Rather, as Foucault now reminds us, "it designated the way in which the conduct of individuals or of groups might be directed."¹⁰⁸ To make the self as both a subject and object through the individuating strategies of totalising knowledge practices therefore involves marking out a structured field of possible identifications in which that self might recognise itself as a subject. This strategy was also central to Foucault's vision of the Enlightenment, which he interpreted as a strategy of blackmail pursued through the grammatical structure of metaphysics, one in which the self was totalised as a subject by making an either/or choice from within the field of force relations which were at work in the discourses surrounding it.

Most importantly, therefore, the ability of power to take a productive disciplinary form was only possible if the subject considered himself to be free. As Foucault's reference to the Enlightenment suggests, he would then see his identification with a range of either/or possibilities as an essentially free choice. Freedom is therefore crucial to the constitution of the self as subject, since without the possibility of resistance found in a free will power could not operate.¹⁰⁹ Therefore, we can say that the practice of choosing between either/or options presupposes the subject which can freely make those choices. As Foucault has suggested, "resistance is never in a position of exteriority in relation to power." Rather, "one is always "inside" power."¹¹⁰ Thus, applying Foucault, we can say that in modern politics free will is essential to the exercise of disciplinary power since resistance to inequality and the constant choice for equality denotes the existence of a will through which the categories of knowledge which individuate the self can pass. As a practice of the self, the desire for equality therefore marks out a crucial technique through which individuals constitute themselves as subjects, something which, as we shall see, is important for understanding what is taking place within today's identity politics. As Foucault notes, "there is no face to face confrontation of power and freedom

which is mutually exclusive (freedom disappears everytime power is exercised), but a much more complex interplay."¹¹¹

In this respect, the approach which Foucault takes to the self in his later work represents an important development, one which extends his analysis of the technologies of subjugation beyond those through which individuals constitute one another as objects to one in which these processes of domination interact with those through which the individual acts upon himself. As Alan Schrift has pointed out, "The contact point between these technologies is what Foucault called 'government' and his emphasis on the care and cultivation of the self is a tacit admission that his earlier genealogies of the subject had placed too great an emphasis on domination by others as the sole form of governing."¹¹² Thus, it is through such practices as the exercise of free will that Foucault is able to link modern disciplinary power with the process of subjectification through which the self is constituted as a subject. As he points out, "There are two meanings of the word *subject*: subject to someone else by control and dependence, and tied to his own identity by conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subjects to."¹¹³

This movement in Foucault's later work towards the subjectification of the self is complemented by a parallel change in his understanding of discourse. It is this which allows us to see concepts such as equality not as descriptive terms of analysis but as mobile resources which are deployed in local contexts as technologies of power. Whereas his early approach to discourse had emphasised its restrictive and homogenising quality, thus complementing his focus on the constitution of the subject as an object of knowledge, the later understanding of discourse can be read as a return to the subject and to the practices through which it is implicated in its own self-constitution. For as we have seen already, it is Foucault's realisation that free will is central to the constitution of the modern self which means that discourse does not merely homogenise differences but in fact works through and so depends upon the will of the subject to resist in the name of

difference. Thus, the later Foucault says that "we must conceive discourse as a series of discontinuous segments whose tactical function is neither uniform nor stable." That is to say, in asserting its freedom to be different the subject is always between domination and freedom. As the means through which power is exercised, discourse therefore becomes "a multiplicity of discursive elements that can come into play in various strategies."¹¹⁴

The important point, then, as we saw above with his analysis of sexual perversion, is that in his later work Foucault shows that discourse can only constitute subjects by simultaneously producing the resistances which destabilise it. As Foucault puts it, "Discourse transmits and produces power; it reinforces it, but also undermines it, renders it fragile and makes it possible to thwart it."¹¹⁵ Unlike the objectified Oriental described by Edward Said in Orientalism, power now operates by constituting subjects whose will to truth and freedom renders them both resistant yet vulnerable to subjectification. Thus, as an objectifying form of power which also interacts with the practices through which individuals constitute themselves as subjects, discourse works at the local level of the self by constituting "mobile and transitory points of resistance, producing cleavages in society that move about, fracturing unities and producing regroupings, furrowing across individuals, marking off irreducible regions in them, in their bodies and minds."¹¹⁶

As this suggests, Foucault forecloses the possibility of a site of resistance which actually transcends the scenes of power that he analyses. Instead, in Foucault's analysis of power all resistances are produced by and are then reabsorbed into the system of discourse to constitute positive identities. As a result, a number of writers have argued that Foucault fails to offer an adequate account of critical agency. Instead, they propose that resistance itself needs to be located outside of society or prior to the appearance of the subject in language in a permanent structure which is ultimately resistant to all disciplinary knowledges. In such cases these writers have turned, as I have indicated, not to traditional ego-centred theories of agency but instead to a more psychoanalytic account of how the self is constituted as a subject. As we shall see as we work through the

possibilities and limitations of the psychoanalytic theory of the subject, the question which needs to be posed concerns "repression," and specifically whether the psychoanalytic theory of repression can offer an account of critical agency which is suitable for today's identity politics - a politics in which heterosexuality can no longer define the terms of identity under which resistance is undertaken.

As I shall suggest, the understanding of repression offered in psychoanalytic theory is unable to provide an account of critical agency which is able to allow for a form of resistance which has the potential to transform the boundaries of the political. Instead, as I work through some of Derrida's insights in order to attempt a reworking of its basic principles, I shall argue that it is only by in fact accepting Foucault's argument about the totalising nature of power that we can make the corrective move of relocating the site of critical resistance within the Symbolic, thereby decentering the psychoanalytic account of repression away from its presumptions about heterosexuality and turning the unconscious into a site which is also able to resist in the name of homosexual and even bisexual desire: something which becomes possible because we have now identified the Symbolic with that risk of writing in which its centre is given over to the possibility of alteration on every site of difference where it is represented. In other words, the psychoanalytic insight into the destabilising effects of repression are now located within an iterative understanding of the Symbolic, which is to say that any attempt to identify with the law of the Father will now force us to risk the foundations of the law itself.

The limitations of Foucault's account of the self as subject has been noted by several writers. For example, in addition to Judith Butler, Wendy Brown has suggested that "Foucault seems to tacitly assume the givenness and resilience of the desire for freedom," and so draws attention to "his distinct lack of attention to what might constitute, negate, or redirect the desire for freedom."¹¹⁷ As she notes, the emancipatory possibilities in Foucault's theorisation of the subject relies on "a curious optimism, even volunteerism," which leads to an "insistently nonpsychic account of power, practices, and

subject formation."¹¹⁸ Most importantly, Brown proposes that "His removal of the "will to power" from Nietzsche's complex psychology of need, frustration, impotence, and compensatory deeds is what permits Foucault to feature resistance as always possible and as equivalent to practicing freedom."¹¹⁹ However, while Brown follows others such as William Connolly and seeks her "profoundly more psychological Nietzsche" in his notion of resentment, Joan Copjec has looked to address the limitations of Foucault's approach through Lacan.¹²⁰

Copjec suggests that the central deficiency in Foucault's analysis is his totalising view of power, since this leads him to fail to properly understand the meaning of negation. That is to say, Copjec argues that in his critique of the repressive hypothesis Foucault seems to interpret negation as a negative judgment rather than as an original negation, one which then remains internal to the subject as a stain which permanently hinders the possibility of the positive constitution which Foucault outlines. As we have seen in his analysis of sexuality, Foucault does indeed see the resistance of marginal sexual identities to negative judgments as a mechanism for the exercise of power. As Copjec puts it, "What Foucault seems to overlook is that form of negation which, while written into language, is nonetheless without content. This type of negation cannot, by definition, be absorbed by the system it contests."¹²¹

One way of putting this is to suggest that while both Foucault and Lacan articulate a position on the phrase "nothing is repressed," Foucault concluded from this that the subject only appeared historically as the effect of the different discourses common to its period, whereas Lacan argued that because it only appears with the negation of its enjoyment of maternal attention the subject could never in fact fully identify with its modes of historical appearance. What is important here is the way in which this distinction points us towards the connection between Foucault's apparent failure to fully understand the meaning of negation and his rejection of repression as a factor in the constitution of the subject. For Lacan, it was because our original enjoyment of the

mother had been repressed that the subject appeared on the site of a negated desire. In other words, it was precisely because desire was repressed that the subject could be represented. However, as Judith Butler points out, it was because Foucault believed that repressed desire was itself the positive effect of the law that he presumed that subjectivity was part of a closed system in which the subject and desire appeared as continuously self-identical.¹²²

The result of Foucault's rejection of repression, therefore, is that he may be, as Copjec puts it, in some measure "guilty of effacing the pockets of empty, inarticulable desire that bear the burden of proof of society's externality to itself. Disregarding desire, one constructs a reality that is realtight, that is no longer self-external."¹²³ In other words, Copjec sees Foucault as rejecting the view that critical agency can only come from a site which is external to society, which for Lacanian psychoanalysts is the Imaginary ideal ego which takes its referent from the experience of fullness found in the desire of the mother. The result of this is that, as we have seen, panoptic society produces the subject as a determinate being for whom such agency is unavailable. As Brown pointed out, Foucault thereby locates the possibility of resistance simply in the will to truth or freedom and the multiplication of different and contradictory subject positions. It is therefore because none of these subject positions are external to power, as in the "subject position" found in the ideal ego, that the subject always circulates within a framework of discipline in Foucault's model. As Copjec notes, in this model "the very condition and substance of a subject's subjectivity is his or her subjectification by the law of the society that produces that subject."¹²⁴

The important point here is that with his rejection of repression Foucault's formula for the exercise of power then equates invisibility with non-knowledge, so that if something cannot be seen then it cannot be a source of agency. In other words, when power is seen to be totalising then there is no "other scene" which structures the visibility of the subject without itself being representable. In this respect, Copjec's most important

insight is that in Foucault's work discourse constitutes the subject without the mediation of the subject's own representations. Consequently, she argues that Foucault's rejection of negation leads him to reject the Lacanian Imaginary as a constitutive aspect of the subject, and thus of the process through which the subject actually identifies with categories of disciplinary knowledge rather than simply being penetrated by them. As Copjec argues, it is because he sees the knowledge about the subject represented in the Symbolic as the purely positive production of the Symbolic itself, rather than as the displaced site of a repressed desire, that for Foucault the Imaginary is an unnecessary element in understanding how power is exercised.¹²⁵

The point here is that the Symbolic does not simply construct a subject which has a desire, such as the desire for truth, freedom or equality. Rather, it creates desire as something which cannot be realised within it by splitting the subject from its original source of truth, freedom and equality: the mother. Thus, as Copjec suggests, it is this "internal dialectic that makes the being of the subject dependent on the negation of its desire [which then] turns desire itself into a self-hindering process,"¹²⁶ one which then gives rise to the identification of an ego ideal around the image of an idealised object which (imperfectly) reflects desire back onto the subject. In the psychoanalytic model it is therefore the inability of society and the law to perfectly duplicate the sense of enjoyment provided by the mother which turns the Imaginary into a permanent structure of resistance. Thus, central to the psychoanalytic reworking of Foucault is the process of imaginary identification through which the subject both internalises and rejects those socially sanctioned identities which circulate around it.

However, an important problem here is that although it resists domination, because the Imaginary is really focused on a scene outside the Symbolic, the neo-natal stage prior to the intervention of the Father and child's entry into society, it only circulates between the rejection and acceptance of societal norms. That is to say, as Žižek has pointed out, societal norms are able to operate hegemonically because they function

as those displaced sites of repressed identification within which the subject reconstructs the fantasy of its ideal relationship to the mother.¹²⁷ In other words, because the subject is constituted as a subject through an original negation it is always orientated towards another scene, with the result that it essentially misrecognises the power structures within which it is caught up. Mistaking their recognition for the desire of the mother, it unwittingly reproduces them.

The point here, of course, is that by relocating the limits of the Symbolic within the Symbolic itself Derrida's reading of differance not only decenters the Symbolic as the location of social authority, it also makes the rejection of societal norms critical and potentially transformative of society since the repudiated sites from which they are articulated are located within the Symbolic itself. As I suggested above, however, this view is only possible if we accept Foucault's argument that there is no outside to power, since it is only this possibility which allows the singular prohibition which organises the psychoanalytic reading of the Symbolic to be brought into question. In other words, in order to be able to see that the sources of critical transformation are within society itself it is necessary to take the position that societal norms such as those found in the Father's law are themselves established through the exercise of power.

Thus, we can perhaps say that Foucault's insight into the totalising nature of modern power provides one of the sites from which we can begin to rework the Lacanian theory of the subject along more Derridean lines. Nevertheless, as I have indicated there are limits to Foucault's account of power, one for which a reconsideration of the psychoanalytical understanding of repression provides a necessary correction. Thus, by exploring the other site from which the Lacanian subject can be reworked, its theory of repression, we can in fact show where Foucault's suggestion that there is no outside to power actually depends upon not simply the repression of incestuous desire, but rather upon the repression of an original undecidability with respect to the direction of desire itself. That is to say, the repression of undecidability is necessary if the productive view

of power which Foucault puts forward is to retain an account of critical agency whose resistance to oppression can fundamentally transform society even while it remains within a framework of discipline.

Therefore, there is a sense in which both Foucault and Lacan each get half the answer to the question of subjectivity. Foucault sees there is no outside to power and Lacan sees that there can be no possibility of resistance without the critical agency which repression produces. However, it is only when we bring both of these positions within the Derridean perspective that I am about to explore that the insights and limitations of both can be properly negotiated. In short, we will begin to explore the way in which critical resistance depends upon a repression enacted within a productive view of power; that is, a repression which, because it remains within the field of the Symbolic, is the repression not of a specific desire but of an original undecidability with respect to the location of desire. In this respect, we shall see that if the centre of the Symbolic is originally undecidable then the repression which provides that centre must remain within the Symbolic itself as non-decisive repudiation; and that it is therefore this moment of overdetermination on the site where the centre itself is thought to be which allows the criticism contained in resistance to be transformative. To put this slightly differently, it is because undecidability shows repression to be arbitrary, in the sense that all of the repressions which take place in the articulation of the word difference are non-decisive, that critical agency is able to unsettle the Symbolic from within. In other words, as an effect of difference, undecidability confirms that there is no outside to the Symbolic and therefore no outside to power. Therefore, so long as we keep within an understanding of the Symbolic based upon Derrida's reading of difference we can see that power is able to totalise but not in a decisive way, so that as the materialisation of the Symbolic "society" is open to the same transformational possibilities as any representational act. In contrast, psychoanalysis presupposes the heterosexualisation of desire prior to the exercise of power, the effect of which is of course to paradoxically both flatter the Real (in the sense

that it can then be represented as the prohibition of incestuous desire) and insulate the Symbolic from fundamental rearticulation.

(2) Derrida and Generalised Negativity

In order to expand upon these points, it is useful to again take the phrase "nothing is repressed" as a point of reference and see how Derrida might respond to this. Perhaps the best way of doing this is to begin by briefly exploring Derrida's relationship to Heidegger, focusing in particular on Heidegger's criticism of the metaphysical account of Being and Derrida's own reinterpretation of this in his reading of differance. It is then through understanding what differance tells us about Being and negativity that we can firstly offer a Derridean interpretation of the suggestion that nothing is repressed and then return to psychoanalysis and the issues of critical agency and resistance which we have been exploring. This interpretation can then be carried forward to a number of other of Derrida's texts, the more important of which in this case would be his reading of femininity in his work on Nietzsche and his interpretation of the gift in his reading of Baudelaire's essay "Counterfeit Money," as well as to the work of other writers such as Jean Baudrillard in his account of transvesticism and Judith Butler in her account of the lesbian phallus. As all of these examples show, it is the way in which Derrida is able to deconstruct the distinction between speech and writing, which is also the difference between the descriptive and the performative use of language, which builds upon Heidegger's own "destruction" of the distinction between Being and being, and thus opens the second site from which we can chart the movement of the subject from a restricted to a generalised negativity.

To be more specific, what Baudrillard and Butler show is the way in which Lacan reinscribes the metaphysical understanding of Being in his account of repression, so that a particular, heterosexual being always precedes the possibility of Being *as such* in the

constitution of the Lacanian subject. It is this that our discussion here is intended to foreground. In other words, it is because it presupposes a repression of homosexual desire that the law of incest prohibition which organises the Symbolic is always prior to the different sexual identifications made by the subject. That is, the law can be seen to be prior insofar as sexual identifications are limited a priori to being heterosexual. As I noted above, it is the intervention of the Father into the mother-child relationship as the sign that society prohibits incest which constitutes the child in its relationship to Being. However, as we see here, this is not Being *as such* but rather a particular and politically significant type of being. From this point we can then attend to those other issues relating to Lacan and Foucault which I raised above.

As we saw in chapter one, in Heidegger's account of metaphysics Being serves to denote that universal term which refers to beings-as-a-whole and which allows each particular being to be present in its own self-presence. However, as he argued, this moment in which metaphysics thinks particular beings in their relationship to Being marks a crucial moment in the constitution of metaphysics itself, which is to say that metaphysics, and with it Western philosophy, is founded on what he calls the forgetting of the meaning of the question of Being; that is, what is the possibility of Being, the possibility of its own coming into presence, to which beings refer. In other words, in Heidegger's criticism of metaphysics it was only in forgetting to question the possibility of Being that human beings could come into their own self-presence, since it was only with the presupposition of Being that each being could recognise itself as such, that is, in its difference from other beings. In his "destruction" of metaphysics Heidegger was therefore looking to recover the possibility of the question of Being, and in order to do this he had to shift thinking away from the mental representation of different beings and towards the thought which thinks the space from which Being itself is sent out. As he suggested, this was a thought-space which withdraws from view at the very moment when it gives the possibility of Being. As Heidegger stated this,

In the beginning of Western thinking, Being is thought but not the "It gives" (es gibt) as such. The latter withdraws in favour of the gift which it gives. That gift is thought and conceptualised from then on exclusively as Being with regard to beings. A giving which gives only its gift, but in the giving holds itself back and withdraws, such a giving we call sending.¹²⁸

The important point here is that it is in the nature of the thought which gives that it gives the gift of Being in the moment of its withdrawal. Heidegger gives us an indication of what this authentic thinking is like when he discusses the idea of dwelling and the gathering together of equipment into an equipment context. As the performativity of these terms suggests, they serve to denote a more phenomenological structure of presencing in which the Being of things is only constituted in the thought which gathers them together. Authentic thinking therefore relates things together so that it is their relating to each other which constitutes the space in which their Being can appear. Thus, in his example of the bridge it is only through its dwelling alongside the river, the banks on either side which it then spans, and the road which would otherwise finish at the river, that the bridge can appear in its bridgeness.¹²⁹ Similarly, in his example of the hammer it is only through its relationship towards hammering in the work performed by the craftsman that the hammer appears in its Being. The hammer thus appears as a hammer because of the context of other equipment in which it is used.¹³⁰ In a very definite sense, then, Being is something which must first be performed in thinking as the gathering together of thoughts into a totality. It is therefore this performance of thought in thinking which gives Being, which provides the space from which it is sent out, but which withdraws as soon as things are thought in the idea which represents their beingness. It is the forgetting of this connection between Being and the space from which it is sent out which made it possible for metaphysics to think of beings purely in their relationship to

other beings rather than to thinking, dwelling, or gathering. We might say that it is the repression of particular beings with regard to the thought of their dwelling-alongside or to their relating-to things through using them which stands at the origin of metaphysics. The beginning of metaphysics is therefore marked by a repression of thinking as it relates to the question of Being. As we shall see, this repression remains internal to metaphysics and under Derrida's reading of Heidegger becomes the aporia upon which critical resistance to the totalising effects of such forgetting (one which we shall see repeated by Lacan) can be staged.

Another way of putting this would be to say that it is the repression of the object in the subject/object ontology that makes it possible to represent "the subject" as a site of Being. The object therefore functions as the thought which gathers together, the space of sending-out for the subject, which constitutes the latter *as such* only in its withdrawal. It is therefore only by forgetting that its presencing through the object renders the subject a particular and finite being that individuals are able to think of themselves as subjects. As Heidegger maintained, it was this separation from his space of sending, his forgetting of this question of how Being is given, which has given modern man a sense of homelessness. This was the same sense of being uprooted which he was later to characterise more starkly when he raised the question of technology and its relationship to Being. Hence, he argued that human beings could only recover their relationship to things by thinking the temporal limits of Being, by recovering that original relationship to finitude which precedes the separation of Being and beings.

This difference between Being and being is what Heidegger called the "ontological difference," which he distinguished from the "ontic difference" which separates one being from another. The ontological difference therefore distinguishes the ground of beings, the horizon of Being in which they appear, from beings themselves. When man is thinking as Heidegger defines this, it is therefore not Being but rather the potentiality-for-Being (as a certain Being-towards) which is present in man. In order to be

open to the question of Being man must therefore resolutely reject the possibility of self-presence, and instead see his own particular being in a condition of always already Being-in-the-world. Heidegger evokes this figure of man as a thinking being in his description of Dasein, a being whose relationship towards Being is to raise the possibility of its own Being as a fundamental question. Heidegger's point here is that Being arrives late, insofar as it can only be thought retrospectively from the horizon provided by things which are ready-to-hand, as in the example of the bridge or the hammer. In Heidegger's analysis of Dasein it is therefore the ontic analysis which gives us the ontological analysis. As he pointed out, Being cannot finally be separated from being when the former must be gathered together from what is ready-to-hand.

If Heidegger's crucial intervention into metaphysics is to show the phenomenological Being-towards which allows the question of Being to be thought, then Derrida's contribution is to see the more radical implications which might follow from it. That is to say, where Heidegger seems to suggest that by dwelling together things can appear in their essence or that in determinately relating towards other things an equipment context can be totalised, Derrida shows that there is nothing to finally ensure that things will ever relate to each other in such a way as to produce a totality. In fact, as he suggests in his discussion of totalisation in "Structure, Sign, and Play," a field like the one Heidegger describes in his examples of the bridge or the hammer excludes totalisation *a priori* and in principle because "there is something missing from it: a centre which arrests and grounds the play of substitutions."¹³¹ Thus, self-presence is deferred not simply because things refer to other things and gain their horizon from within this Being-towards, but because there is no referent to guarantee that this Being-towards-something is not at the same time a Being-towards-something-else. In other words, even while Being-towards each other, things continue to differ within themselves. Thus, Derrida offers a more radical phenomenology because the "there" towards which we are led inasmuch as we have Being remains resolutely undecidable.¹³² What is there, we need

to ask, to ensure that a hammer will not appear as a paper hat or a bridge appear as a turkey drumstick? Therefore, when Derrida refers to the forgetting of the question of Being it is always the trace as the minimal difference which allows thought to be sent out which is forgotten. As he suggests in relating the trace to the structure of differance, "If we maintain that *differance* (is) (itself) other than absence and presence, if it *traces*, then when it is a matter of the forgetting of the difference (between Being and beings), we would have to speak of a disappearance of the trace of the trace."¹³³

As we have seen already, one of the ways in which Derrida relates the movement of the trace to the distinction between Being and being is through his reworking of the relationship between speech and writing as this has traditionally operated in Western philosophy. It is where speech as the Being of writing, the horizon which grounds writing in its being as just an aid to a poor memory, is itself revealed to be a form of writing, something necessitated by the system of differences which permits meaning to appear in words whether they are written or spoken, that the boundary which metaphysics maintains between Being and being is shown by Derrida to visibly collapse. In other words, rather than directly representing meaning as a sign of Being's self-presence there is an irreducible trace of writing on the site where speech appears. This is why Derrida finds the word *differance* useful. As he shows, in the movement through which the "a" is opened up to the risk of displacement by the "e" when it is articulated in speech, *differance* gestures towards the radical contamination of speech and writing at the point where speech is supposed to indicate Being as self-presence.

Thus, Derrida uses the trace of writing in speech to illustrate the point that Being must first be thought from within itself in a moment of substitution and displacement. Like the word *differance*, Being experiences different possibilities which are internal to itself. Rather than self-present, the equivocation between the "a" and the "e" confirms that there is a double inclusion on the site of Being. It is this double inclusion which shows that Being is actually sent out from a particular site. Therefore, it is only the way

in which difference differs from differance as an example of differance which constitutes it in its Being, just as it is the way in which speech differs from writing as an example of writing which constitutes it as a point of reference for Being. Through the root indeterminacy of the word Derrida therefore shows that Being does not exist in a relationship of self-presence. Instead, as the word differance shows, there is always the trace of some particular being. Thus, rather than being grounded in itself, Being finds its referent in the play of substitution and displacement which appears at the point of enunciation. In other words, there is no Being before being something "not-quite-not-like" ourselves,¹³⁴ before the ontic everydayness in which the word, which in this example is the word differa/ence, is articulated.

As I have tried to signpost here, the word differance gives us an insight into how Derrida would read the phrase "nothing is repressed." What we therefore need to focus on is the root indeterminacy of the phrase which, like the word differance, allows it to be the same in both its passive and active forms without either form being identical to the other. Thus, when we read the phrase "nothing is repressed" we must not be content with the monological reduction characteristic of metaphysical logic. Instead, because metaphysics is based upon an original repression of undecidability a trace is already at work in the line as we have just read it, a trace which means that we will not merely have just read this line but also written it. In other words, we must not look for just the passive enunciation in which nothing is repressed refers to a free play of events, feelings and ideas. Rather, we must also read this line for its active deferral of that to which the passive form refers. That is to say, nothing is repressed can also be read as indicating that "nothing *is* repressed."

Thus, as with the word differance, it is not possible to finally determine the Being of the phrase "nothing is repressed." Instead, just as with the play of substitution and displacement at work in the word differance, the phrase "nothing is repressed" provides an example of the experience which it describes. That is to say, it describes the

repression of nothing at the same time as it articulates the possibility that nothing is repressed. Thus, it substitutes and displaces within itself. As with the "a" and the "e" in differance, it is the silent writing of the "is" in the passage between the passive and active voice, the passage in which speech gains its performative force of writing, which collapses the boundary between Being and being.

Therefore, where metaphysics substitutes a particular being for Being itself it reveals the moment at which the scope of negativity is restricted. As a result, it is firstly through Derrida and Heidegger's reworking of the priority between Being and beings, and then secondly through Derrida's reworking of Heidegger's account of the performative, that we encounter generalised negativity and thus acquire the critical resources for reworking the psychoanalytic theory of the subject. As I shall suggest shortly, reworking the space from which the gift of Being is given along Derridean lines creates a context in which Lacan's account of repression can be rearticulated as a mobile and variable site of critical agency from which the resisting subject is sent out; one which most significantly is structured around the original undecidability of sexual desire.

(3) Sexual Identity and Generalised Negativity: Nietzsche's "Woman," the Transvestite, and the Lesbian Phallus

As I have suggested, the relationship between Being and being is reworked in several of Derrida's other texts. However, I want to start to broach my critique of the restricted negativity at work in psychoanalysis by in fact highlighting a certain restriction of negativity in Derrida's reading of femininity in his text on Nietzsche, and then comparing it to other readings of femininity and masculinity given by Jean Baudrillard and Judith Butler. As we shall see here, because the focus of Derrida's interest in his reading of Nietzsche is a deconstruction of the notion of an essential female identity held by 1970's feminists, he also reinscribes the same connection between sex and gender

which has organised psychoanalysis in its reading of female sexuality. Therefore, where he takes up Nietzsche's concept of "becomes-female" to show that femininity is something which women take on as a strategy of seduction rather than something which they inhabit a priori by virtue of being female, he simultaneously limits the scope of female sexuality to an identification with heterosexuality.

The point here is not that Derrida's reading is "incorrect." Instead, it requires our own reading of his text to employ a certain "ethics of reading" where we are able to recognise the site of deconstruction which he has marked out. Indeed, it is perhaps worth suggesting that his distancing of the feminine from the idea that anatomy and gender are a natural or essential association is one which in fact opens the space in which non-feminine females and non-masculine men (ie. Butler's phallic lesbian and Baudrillard's transvestite) can themselves appropriate the signifiers "woman" and "femininity" in order to reconfigure our appreciation of the connection between gender and sexuality. Therefore, while we might want to distance ourselves from Derrida's reading of woman on the grounds of its restricted negativity, we need to keep in mind that deconstruction can only take place within the aporias given by the text at hand, so that for Derrida to deconstruct 1970's feminism in the name of gay and lesbian sexuality would in that context have represented the turn to an external aporia and the identification of that privileged site of deconstruction which deconstruction itself says must be deconstructed.¹³⁵

In his reading of Nietzsche, Derrida begins by turning to the question of "woman" to show how identifying with femininity suspends that opposition with falsity which metaphysics has deployed to produce its understanding of truth. As he suggests: "Nietzsche revives that barely allegorical figure of woman in his own interest. For him truth is like a woman. It resembles the veiled movement of feminine modesty."¹³⁶ The point here is that Nietzsche's realisation that female identity is not centred until femininity is taken on through an identification with castration provides the space in

which Derrida can explore the idea "becomes-female." Thus, for Derrida, Nietzsche shows that by appearing through the representation of feminine modesty, woman is subject to the same fate as all concepts: that their truth, which in this case is the truth of her feminine gender, cannot be presumed simply through reference to her anatomical sex. The female subject designated in the name "woman" is therefore never feminine *as such*. Rather, as Derrida suggests "Woman, inasmuch as truth, is scepticism and veiling dissimulation. This is what must be conceivable."¹³⁷ As I have noted, the key to Derrida's deconstruction here is the relationship which female identity is supposed to have to castration. Rather than providing a referent which fixes female identity around the absence of the phallus, Derrida suggests that, as a supplement rather than a final marker, castration in fact indicates the lack of essence in woman's relationship to her gender. Thus, appearing to be without the phallus does not represent a merely descriptive act which simply confirms the attachment of women to a female gender. Instead, femininity denotes a performative act which in fact constitutes woman as a gendered subject. As Derrida notes: "Woman - her name made epoch - no more believes in castration's exact opposite, anti-castration, than she does in castration itself. Much too clever for that she knows that such a reversal would only deprive her of powers of simulation....She knows that she would only find herself trapped once again in a phallogentrism."¹³⁸

The problem here, however, is that castration is still the only sexual identification open to women within the context in which Derrida's deconstructive reading of woman takes place. That is to say, because he is still operating within the opposition of gender and sex, the only deconstructive move open to him is to show that gender identity is something which is taken on as a dangerous supplement to sex rather than something whose performance disrupts any attempt to identify gender through anatomy, as Baudrillard's account of the transvestite and Butler's account of the phallic lesbian will be seen to do. In other words, although Derrida shows that women take on castration as a strategy of femininity and in this respect perform the terms of their gender identity, he

does not have the critical space in which he can think the possibility that they might identify with something other than castration. For as we shall shortly see Judith Butler suggest, they might identify *with* the phallus, just as Baudrillard will show how some men identify away from it. In taking on femininity, women therefore deploy castration as a strategy of seduction (just as the male transvestite does). However, this does not preclude the possibility that women might take on masculinity; indeed, for the phallic lesbian described by Butler masculinity is itself a strategy of seduction. There is therefore a restriction of negativity in Derrida's account of woman, so that although she might play with castration's effect, this is the only effect she is able to play with. As he himself notes, "Unable to seduce or to give vent to desire without it, 'woman', is in need of castration's effect. But evidently she does not believe in it. She who, unbelieving, still plays with castration, she is 'woman'."¹³⁹

Therefore, although Baudrillard's account of the transvestite appears to support Derrida's contention that femininity is taken on as a strategy of appearances, he in fact leads us to question whether Derrida's focus on feminine seduction is enough to secure women to their gender identity. Instead, Baudrillard argues that it is only the non-female female who can truly be seductive since she/he occupies the space not of sex but of simulation. Like Derrida, Baudrillard's point of departure is also the relationship between femininity and truth. But in contrast to Derrida he suggests that as "a principle of uncertainty," femininity "is not the pole opposed to the masculine, but what abolishes the differential opposition."¹⁴⁰ The point here is that if the feminine is the principle of uncertainty then this femininity will be most strongly felt where uncertainty is at its greatest: in the transvestite. As Baudrillard argues, the spell that they cast is not the attraction of one sex for the other (which is really as far as Derrida's critique of femininity goes) but rather is born from sexual vacillation. In other words, it is the ability to render the anatomical space from which gender is sent out uncertain which makes the transvestite seductive. Thus, the transvestite transubstantiates sexual identity away from

simply the performance of a sex determined gender into that total game of signs which is still not yet fully realised in Derrida's reading of woman. As Baudrillard proposes, "if their [the transvestite's] lives appear more sexually endowed than our own, it is because they make sex into a total, gestural, sensual, and ritual game, an exalted but ironic invocation."¹⁴¹ The important point here is that the transvestite deconstructs the basic argument which Derrida makes about woman and femininity. That is to say, because she/he parodies sexual identity through its over-signification, she/he shows that female identity cannot be guaranteed simply by taking on castration as a strategy of seduction.

Judith Butler addresses the same question of whether taking on femininity is sufficient to ground female sexuality when she asks whether masculinity requires that the phallus must be symbolised by the male genital or whether other body parts might not operate in the same way, thereby deconstructing the assumptions which connect gender to sex. In doing so, she suggests the possibility of the "lesbian phallus." In keeping with the other paradoxical overdeterminations which we have considered, Butler argues that the lesbian phallus does not admit a final determination between its passive (being) and active (having) forms. Instead, like the transvestite, it deconstructs the opposition between them. As she points out, "[I]t should be clear that the lesbian phallus crosses the orders of having and being, it both wields the threat of castration (which is in that sense a mode of "being" the phallus, as women "are") and suffers from castration anxiety (and so it is said "to have" the phallus, and to fear its loss)."¹⁴²

What is important here is that by inverting the example of the transvestite the lesbian phallus identifies the root indeterminacy of masculine sexuality and with it the heterosexual difference upon which the Lacanian Symbolic is centred. As Butler argues, it suggests that the phallus "is not the incipient moment or origin of a signifying chain as Lacan would insist, but part of a reiterable signifying practice and, hence, open to resignification: signifying in ways and in places that exceed its proper structural place within the Lacanian symbolic and contest the necessity of that place."¹⁴³ Thus, in contrast

to Derrida's deconstruction of woman's relationship to castration, but consistent with Baudrillard's evocation of the uncertainty of sexual identity in the transvestite, Butler invites us to understand that the marker from which sexual identities are sent out is essentially undecidable, and that because of this what we take to be the natural association of gender with anatomy provided by both essentialists within feminism and by psychoanalysis is always already open to the possibility that it might be represented differently. In other words, she gestures towards that relocating of resistance to the structure of the Symbolic itself of which I spoke earlier, one where gender might finally be understood as an assertion of power in the signification of sexual identity.

To indicate what a Derridean reading of sexual identity might look like today, I think that we can learn a lot from his reading of the gift, so that, like the gift, sexual identity is only constituted in the performative act of giving a name, such that giving the gift constitutes what is given as "the gift" only by naming it as such. As I have explained, this interpretation of the "gift of sexuality" is gestured at in Derrida's reading of Baudelaire's essay on the giving of counterfeit money, where Derrida leads us to the point where we are forced to conclude that there is no pre-discursive marker which can secure the gift in its relationship towards Being. Instead, as Derrida points out towards the end of this essay, it is because even Baudelaire himself as the author is unable to finally determine whether the money which is given in his text is really counterfeit or not that there is always the possibility that, like the phallus in Butler's account of sexual identity, the Being of the gift may be reappropriated and resignified. As Derrida points out, this undecidability which exists between giving and receiving is irreducible and constitutes the possibility of any act of giving.

In fact, in an interview given before the text on Baudelaire was written, Derrida had himself briefly noted the significance of this thought of the gift for sexual identity. As he put it, "One wonders whether this extremely difficult, perhaps impossible idea of the gift can still maintain an essential relationship to sexual differences."¹⁴⁴ On this basis

he poses the crucial question of "Must one think "differences" "before" sexual difference or taking off "from" it? Has this question, if not a meaning (we are at the origin of meaning here, and the origin cannot "have meaning") at least something of a chance of opening up anything at all, however im-pertinent it may appear?"¹⁴⁵ In other words, there are other texts where Derrida does in fact destabilise the essentialisation of sexuality in anatomical difference. As he adds a little later in the same interview, "What remains undecidable concerns not only but also the line of cleavage between the two sexes....No monological discourse - and by that I mean here mono-sexual discourse - can dominate with a single voice, a single tone, the space of this half-light, even if the "proffered discourse" is then signed by a sexually marked patronymic."¹⁴⁶

Instead of monosexuality he argues that a certain "double dissymmetry" which goes beyond the grammar of marked codes in fact represents the law both of sexual difference and the relationship to the other in general. As he says, "what if we were to reach, what if we were to approach here (for one does not arrive at this as one would at a determined location) the area of a relationship to the other where the code of sexual marks would no longer be discriminating?"¹⁴⁷ This would be "beyond the binary difference that governs the decorum of all codes, beyond the opposition feminine/masculine, beyond bisexuality as well, beyond homosexuality and heterosexuality which come to the same thing." This leads Derrida to a dream whose vision he seeks to affirm as a possibility: "As I dream of saving the chance that this question offers I would like to believe in the multiplicity of sexually marked voices....this mobile of non-identified sexual marks whose choreography can carry, divide, multiply the body of each "individual," whether he be classified as "man" or as "woman" according to the criteria of usage." As he concludes, looking for this affirmation, "Does the dream itself not prove that what is dreamt of must be there in order for it to provide the dream?"¹⁴⁸

From the point of view of critical agency, Derrida's dream of the "gift of sexuality" therefore affirms to us that the resources for resistance always lie within the structure of the Symbolic itself as the horizon of its contingent (im)possibility, and not, as psychoanalysis would want to suggest, in a site which is external to it. In other words, where the Real was a permanent site of resistance for Lacan, Derrida shows how the Real is in fact a mobile effect produced by the iterative structure of the Symbolic. In this respect, I am of course tempted to suggest that the fact that the Real must be given as a gift, and thus exposed to the risk of resignification, might be a stroke of luck for politics and all historical progress, especially for progress in the recognition of homosexual and bisexual identity. Reworking the psychoanalytic model, it is therefore our inability to determine that in giving male or female sexuality these will not be received as homosexuality or bisexuality, just as it is impossible to determine that the gift of counterfeit money will not continue to be received as authentic, which allows for the permanent possibility of critical insurgency within the Symbolic. The Real is therefore not locatable along a single vector of prohibition but is rather, as this reading of the gift suggests, the threat of the same original undecidability which inhabits the name, word or phrase. As I have suggested, it is this which means that the conditions for resistance and resignification always lie *inside* the words "masculine" and "feminine" themselves since the repression of these alternative readings, such as that given by the transvestite or the phallic lesbian, are the minimal difference from which the traditional norm of heterosexuality given by psychoanalysis is sent out.

As this suggests, putatively descriptive accounts of sexual identity such as that given in the account of the oedipus complex and its resolution in the incest prohibition always carry a performative force which marks out an internal exclusion. As Baudrillard's account of the transvestite and Butler's account of the lesbian phallus suggests, the prohibition of incest already presupposes the prohibition of homosexual desire.¹⁴⁹ Such an exclusion is therefore never external to the heterosexual subject which psychoanalysis

takes as the basis for its theoretical speculations but rather persists within it as its internal limit. Therefore, it is such an overdetermination on the site of masculinity and femininity which provides the possibility that gay men and lesbians might contest the terms of the psychoanalytic model and so resignify the scope of sexual desire, and with it the structure of subjectivity, in less restricted ways. In other words, it is because the resolution of the oedipal crisis cannot finally close out the field of sexual identification that the space from which "authentic" sexual identity is sent out remains the site of an original undecidability. As a result, as I have said there are no prior grounds upon which to secure the possibility that the space of sending masculine or feminine identity may not be received as either heterosexual, homosexual, or bisexual attachment rather than just heterosexual. As I suggested above, the Being of particular beings is only found in the performance of a Being-towards-something which carries the risk of Being-towards-something-else.

This critical interpretation of the Symbolic therefore offers us a way of reworking our understanding of the unconscious along less essentialist lines. Rather than an effect of the singular vector of repression represented in the psychoanalytic account of the incest prohibition, a single moment of negativity which founds the subject as one who only desires those of the opposite gender, the unconscious can instead be thought of along the lines towards which Derrida gestures when, in his reading of Freud's account of "The Mystic Writing Pad," he suggests that it consists of "a weave of pure traces, differences in which force and meaning are unified - a text nowhere present, consisting of archives which are always already transcriptions."¹⁵⁰ As I want to interpret it here, under this reading, rather than referring back to an original traumatic event such as the oedipal crisis which fixes sexual identity in heterosexuality and defines homosexuality as a neurotic deviation from this norm, the origin of the unconscious remains within the Symbolic itself where, instead of being fixed around such a primordial norm, it falls open to the play of resistance and repudiation marked out by Derrida's understanding of

differance as the repetition of identity within difference, wherein each articulation of differa/ence represents the site of another trace upon which the unconscious is constituted in a never ending process of referring back.

Thus, following the principle suggested by differance, the unconscious which psychoanalysis would associate with the name "woman" is no longer understood simply in terms of a repressed female sexuality. Instead, by locating it within an understanding of the Symbolic as shifting and decentred, the name "woman" also refers the unconscious back to such repressed identifications as masculinity or bisexuality. The same of course applies to male sexuality, where the male unconscious is not simply accounted for in terms of a repressed desire for incest which then defines every subsequent sexual experience as a substitution for this original loss, but, as the transvestite shows, as an original undecidability with respect to the direction of desire. Thus, although in psychoanalysis the structure of the Symbolic is organised around the idea of a dominant male sexuality and a subservient female sexuality, the unconscious of male and female sexuality does not refer back merely to a repressed desire for incest or a repressed sense of feminine sexuality. Instead, it refers back further to such positions as homosexuality or bisexuality whose exclusion from the Symbolic cannot be exhausted by the prohibitions set out in psychoanalysis. That is to say, they gesture at an exclusion which is prior to the constitution of the Symbolic along heterosexual lines but which nevertheless persists within it as the limit of its contingent possibility. As this suggests, there is a repressed possibility for sexual identification which persists throughout the life of the psychoanalytic subject and which therefore points at the already political rather than merely anatomical terms under which psychoanalysis takes place.¹⁵¹ In other words, the diagnostic structure which is built upon the theory of the oedipus complex needs to be seen as just one of many sites upon which dominant cultural discourses inscribe the terms of legitimate sexuality.¹⁵² In its interpretive construction of the Symbolic it is therefore important to situate psychoanalysis *within* the social neurosis which it would rather

appear to be seen as simply describing, something which I attempt to do in the next section by reading Freud's concept of fetishism back into psychoanalysis.

As this account of the unconscious suggests, when we decentre the Symbolic along the lines of sexual undecidability, resistance to domination is no longer fixed in the Imaginary at least as Lacan conceives of it. Instead, its role as the site of critical agency is reworked as the identification of individuals with their sexuality moves across those variable sites of signification where the terms masculine and feminine might be appropriated and reinscribed either by the transvestite, by the phallic lesbian, or by the bisexual. The possibility of an *ideal* ego therefore drops out insofar as this ideal is now dispersed across, and so localised within, different notions of what an ideal sexual identity is. It may be straight, gay, lesbian, or bisexual. The point here, then, is that since the ideal ego was the grounds of resistance in the Lacanian model of the subject, resistance too has become variable and mobile insofar as the nature of the critical agency which is brought to bear within the Symbolic will depend upon the particular sexual identification which is repressed.

In arguing that sexual identity is originally undecidable we are therefore correct to follow Foucault and maintain that there is no outside to power. However, as we have seen here, we must also be careful to locate this move within a Derridean reading of the Lacanian unconscious. For it is only then that the repressed other which resistance attempts to recover will represent the internal and therefore contingent limit of the Symbolic itself. As Butler points out, this type of situation appears to define both the critical insights of and the emancipatory limitations which exist for contemporary identity politics. That is to say, the condition of their ability to work against the norms which govern the Symbolic is that they then recentre the Symbolic through the inclusion of their own identity. In other words, they never exceed the circuit of discipline which the dependence of resistance upon a simultaneous repudiation creates. In other words, through the internal relationship between resistance and repudiation the subaltern subject

cannot avoid the condition in which it must already participate in the reproduction of *the* legitimate political subject.

Therefore, as a woman who is also a lesbian, for example, becomes conscious that her gender identity is constituted within contemporary Western society upon a repudiation of her sexuality, her resistance to this repudiation participates in a circuit in which discipline is reproduced. For in resisting the repudiations which confine us in our Being we keep in motion the on-going tension between freedom and domination which Foucault has noted. Within this framework, the more general point which psychoanalysis misses is that the Real is never outside of power. Rather, it is correspondent with the structure of language and thus always already within the Symbolic.

In this respect, we might offer a further reflection here on the question of generalised negativity. As I will suggest in chapter eight and then again in the case study, within a Derridean reading of negativity the repudiation of gay and lesbian sexuality can be explored not merely in the context of the overt heterosexuality which centres psychoanalysis, but also in the context of race where the assumption of heterosexuality operates more discretely. In this respect, the marks which code the phallus can be seen to extend beyond sexuality to racial identity and especially to the inscription of the phallus - the signification of authority - at the intersection of the two. If we are to consider fully the shift from restricted to generalised negativity, it is therefore the critical agency which appears not merely at the limits of psychoanalysis but also at the intersection of psychic sexuality with other sites where social domination is constructed, such as race, which must be considered. Indeed, it is vital if the notion of generalised negativity is to provide that account of critical agency which is consistent with today's identity politics.

(4) Psychoanalysis without Reserve

In order to fully understand the move from a restricted to a generalised negativity which I have explored in this chapter, it is necessary to appreciate that the positions taken by Derrida in his reading of the gift of sexuality, by Baudrillard in his account of the transvestite, and Butler in her account of the lesbian phallus, make a departure from a very long line of critical thinking which not only covers writers such as Lacan which we have noted above, but also writers such as Marx and Freud to whose critical limitations we may only briefly gesture at. The point, to put it briefly and in psychoanalytic terms, is that all of the latter believed that the Symbolic concealed a more fundamental truth about the subject and so flattered the Real, whereas Derrida has shown that at the hands of these writers the Real is also the site of a concealment. As I have suggested, for these writers the Real is the place where the undecidability at work in the phrase "nothing is repressed" is itself repressed. As a result, we can say that through his aporetic readings Derrida has sought to recover the Symbolic itself as the site of the Real, so that repression never exceeds the iterative circuit constituted through the adventure of writing.¹⁵³ Thus, writers in both the psychoanalytic and Marxist traditions, although they have tested its boundary with the Symbolic, have always fetishised the Real, which then becomes the site of their seduction. That is to say, the Real is made into something representable and in doing so becomes a strange attractor.

For example, where Marx identified commodity fetishism as a displaced site of the consumer's labour, his desire to know the world as the object of his own making, and Freud identified the fetish with body parts and other objects as the displaced site of a repressed desire, the male subject's attempt to preserve that moment of identification with the mother prior to the appearance of the castration complex,¹⁵⁴ Derrida would identify fetishism with any attempt to displace the root indeterminacy of the Real and thus of the basis of resistance in general. Under these circumstances, rather than the site

of the Real both labour and the heterosexual unconscious formed around the prohibition of incest are themselves brought back within the terrain of fetishism as objects of desire which can be subjected to critical analysis. Understood as just another simulation produced within a decentred Symbolic order, they become what Baudrillard calls "strange attractors," a term whose deliberately mixed metaphor serves to denote that indeterminate relationship to their sign value or referential meaning which makes all objects, words or phrases seductive.¹⁵⁵ The strange attraction of the object does not therefore lie, as Lacan for example would argue, in the loss of a particular representation which it then conceals (such as the loss of the mother as a phallic signifier for the infant) but in its overexposure to the play of representation.

We can perhaps appreciate this argument better by focusing on the restricted negativity at work in Lacan's understanding of the Real. Of crucial importance here is Lacan's suggestion that, following the resolution of the oedipal crisis, the Real is no longer identified with the fullness which comes with maternal attention but instead with the infant's realisation that the mother no longer has the ability to confer recognition. Rather than the experience of fullness, the mother instead comes to symbolise castration: the loss of the phallus, which now resides with the Father. Thus, as a post-oedipal account of the Real, the loss of the phallus comes to designate that traumatic kernel upon which the subject is constituted. The main problem here, the one which marks the Lacanian Real as a site of fetishism, is that, in contrast to Derrida's notion of undecidability, this "lack" of the phallus which Lacan identifies with female sexuality serves to represent a determinate boundary for the Real. As a referent for subjectivity, the loss of the phallus therefore reinscribes the metaphysical parameters of presence and absence right at the point where Derrida finds only the kind of undecidability which the word *différance* has served to denote. Like Marx and Freud, Lacan therefore tests the boundary between the Symbolic and the Real but ultimately flatters the latter by giving it a name.

This is central to Lacan's psychoanalytic theory, since it is the subject's attempt to repress this experience of loss - where the loss of the phallus by the mother is equated by the child with the loss of an unmediated experience of Being - which gives Lacan access to the Real, via the identification of symptoms. Here the limitations of restricted negativity are immediately apparent, since it is only by positing a single prohibition such as that figured in the incest crisis that the subject can be analysed in terms of symptoms. This is because the loss of maternal attention which then leaves the infant with a mediated experience of Being¹⁵⁶ takes place only on the intervention of a particular being: the heterosexual male. Lacan can therefore only turn psychoanalysis into a diagnostic system by conflating Being, the "normal" subject, with the particular being which allows this normal subject to be represented as such. Therefore, although Lacanian theorists such as Copjec have criticised Foucault, he is, in a sense which he did not intend, correct to argue that nothing is repressed. Therefore, whereas Foucault argued that "nothing is repressed" in the sense that every sexual identity is fully totalised within the matrix of productive power, I want to suggest, following Derrida, that within this phrase something is repressed. That is to say, what is repressed is not the Real, or in Foucault's formulation its non-existence, but rather the impossibility of directly representing the Real: the impossibility of giving a final meaning to this phrase which Lacan's substitution of female sexuality betrays. Therefore, it is precisely because it *cannot* mark a determinate origin that the Real marks the possibility of an anxiety over castration which exceeds heterosexual difference and instead pervades all sexual relations which depend upon the recognition of desire.

The point here is that if the Lacanian Real really was unnamable in the same way that words such as *differance* and phrases such as "nothing is repressed" appear to be,¹⁵⁷ then it could not be deconstructed, which is precisely what Judith Butler has done. Butler's argument suggests that the relationship between the Real and the understanding of women in Lacan is structured upon a paradox which essentialises the Real along the

same lines which I have explored with the notion of fetishism. For as Butler suggests, if the assertion that the Real is a site of lack which serves as a constitutive outside to representation is meant to support an anti-essentialist view of the subject, then Lacan's suggestion that women represent that lack, represent the threat of castration installed by the intervention of the law of the Father, then this indicates that there is a conflation of women with the Real which, Butler maintains, "is as pernicious as any form of ontological essentialism."¹⁵⁸ Thus, as Butler shows, the Real is reinscribed in Lacanian psychoanalysis as a determinate site, where the name "woman" becomes equated with the experience of an original lack in Being. Rather than being undecidable, the Lacanian Real receives a determinate differentiation along traditional gender lines. In other words, what is really repressed in Lacan's theory is not the Real, which is instead represented by the name woman and the "fact" of female castration, but the unrepresentability of the Real itself - something which we see when we realise that the representation of the phrase "nothing is repressed" circulates within its own internal limit.

In Lacan, this repression serves as the basis upon which his entire psychoanalytic project is erected. It is only through the repression of the Real's ultimate unrepresentability, the fact that the only thing there to repress is the interpretive play in the name, word, or phrase, that the subject can be represented as lack around the foreclosure of the desire of the mother. Central to this edifice is the operation of the Imaginary as the site where the foreclosure of the mother is refused. The point here is that by challenging the idea that the Real can only be represented by the loss of the mother as the site of the phallus, we also challenge the idea that the relationship between the Real and Symbolic is mediated by an Imaginary whose ideal ego is fixed simply around male identity and heterosexuality.

Against this, I want to suggest that we need to understand the Imaginary as an effect simulated by the unconscious when we rethink the latter not as the site of the Real, which is unrepresentable, but as an "object" which is part of the Symbolic. When we

challenge the assumption that the unconscious originates in a Symbolic order whose structure is organised around a centre, which is what Lacan assumes when he indicates the intervention of the Father's (heterosexual) law, we are then able to rework the psychoanalytic argument that the subject is constituted around a single site of repression and the belief that there is an ideal ego to which it must conform. Instead of being mediated through this singularity, the Imaginary then appears as the effect of the objects in which ego ideals are simulated and what is repressed in the formation of the subject is therefore the undecidability at work in the names of those objects.¹⁵⁹

What we might call the fatality of the Imaginary therefore lies in the fact that there is no final referent such as the foreclosure of the mother for it to return to. Instead, like Derrida's analogy of the postal system it then gets lost in the Symbolic.¹⁶⁰ As with the collector which Baudrillard describes,¹⁶¹ the ideal ego then becomes a secondary effect of symbolic exchange, the process of substitution and displacement which Derrida identifies in the signification of words like *differance*.¹⁶² As he suggests in one of his essays in which he gestures towards his critique of the psychoanalytic theory of subjectivity:

Everything begins by referring back (*par le renvoi*), that is to say...there is no single renvoi [referent] but from then on, always, a multiplicity of renvois [referents], so many different traces referring back to other traces and to traces of others. This divisibility of the envoi [that which sends out representation] has nothing negative about it, it is not a lack, it is altogether different from subject, from signifier, or that letter of which Lacan says it does not withstand partition and that it always arrives at its destination.¹⁶³

The origin of the Imaginary does not therefore lie simply in the repression occasioned by the intervention of the Father's name. Instead, as we have seen, this intervention in fact represents the repression of a particular, heterosexual desire which is then already implicated in the repression of both homosexual and bisexual desire. Without the presumption of heterosexuality to centre the Symbolic, the ideal ego

therefore tends to get lost in those reinscriptions which are metaphorically expressed as the attempt to deliver letters undertaken by the postal service. That is to say, from the moment when its self-image is addressed to an object the ideal ego is already lost in its delivery through an object whose own referent is undecidable. Therefore, without the phallus to guide the circulation of the mail/male the Imaginary does not work with a permanently ideal ego, but instead follows a pattern of generalised negativity in which it is always open to being-centred and becoming-decentred.¹⁶⁴

In general terms, we now have something of a critical framework within which to consider the question of subjectivity. As can be seen here, I have distanced myself somewhat from the psychoanalytic theory of the subject suggested by Lacan and have tried to reinforce Foucault's account of productive power through a Derridean critique of psychoanalysis. In doing so, I have turned to the work of Derrida and Heidegger, and in particular to Derrida's understanding of differance and the reworking of Heidegger's performative account of Being which it permits. As I have noted, one way of reading Derrida is as a more radical interpretation of the critical phenomenology set out by Heidegger in Being and Time. As we have seen, Derrida's understanding of differance sharpens the critical force at work in Heidegger's understanding of the performative by identifying a moment of "non-decisive repudiation" as constitutive of any Being-towards. As such, he provides phenomenology with that notion of critical agency and resistance which Heidegger's use of such terms as dwelling and gathering are unable to deliver. In other words, as I suggested in the introduction, Derrida's reading of words such as differance appears at that intersection of phenomenology and psychoanalysis where the thought of "Being-there" provides psychoanalysis with a performative basis for thinking the Real, and where the psychoanalytic theory of repression brings the question of agency and resistance back to the gathering of thought. The scope of Heidegger's deconstructive thinking therefore remains limited by his assumption that it is possible to totalise Being within the act of dwelling and gathering, just as Lacan's is by the assumption that

resistance is only staged in the name of heterosexual desire. The reason why Derrida is important then, is that he follows through fully with Heidegger's attempt to offer a constant provocation to thinking without sliding back and giving into the temptation to totalise; something of which Lacan, in his unreflective use of the theory of incest prohibition, is also guilty.

In turning not only to Derrida but also to Baudrillard and Butler to formulate an understanding of critical agency around the idea of generalised negativity, I am therefore offering a post-psychoanalytic account of how the subject comes to be a particular kind of subject, a heterosexual subject, which in turn will later allow me to explore how it comes to be another kind of subject: a multiracial one. In doing so, I still believe that I am following through with Foucault's basic critical project, which was to provide an analysis of the "politics of ourselves." In this respect, I think that it is useful to follow two lines of interpretation which together reflect the impact of this Derridean account of agency on our reading of Foucault. Thus, the issues of resistance and repudiation and how they operate to produce the subject will provide the basis upon which the two chapters of my case study are presented. This allows us to recognise that there are internal structural limitations to the subject which resists its interpellation by those discourses which would seek to objectify it, limitations which then engender further sites of resistance by producing their own internal repudiations. Thus, through a focus on the issues of resistance and repudiation we will be able to see how there is no outside power but how power can also be transcended. In other words, we will see how critical agency becomes possible without creating a metaphysical dependence on an external aporia.

The point which I hope that I have been able to stress in this chapter, therefore, is that there is no ontological foundation to the subject. That is to say, the source of the subject's fetish for the object does not derive from the resolution of the oedipus complex in the incest prohibition and the resulting assignment of heterosexual difference. Rather, it derives from the presence, or to be more precise the absent-presence, of the object

itself. That is to say, the Symbolic order is not organised around a submission to the law of the Father, but to the "law," if we may use that term, of difference. In other words, the relationship between the subject and the Symbolic is not constructed simply around a relationship of negation; it is not a negative relationship. Instead, as we find with Baudrillard's concept of seduction, it is constructed around irony, parody, or what both Heidegger and Derrida call "the play of the world." The relationship between the subject and the object is therefore never merely one of the subject's submission to a prohibitive injunction in which the subject is before the law. Rather, as the play of the wor(l)d, the object system also leaves the law before the subject, which is to say that it is unconstituted before the fetishistic intervention of "the subject" which attempts to represent itself *as such* through the object. That is to say, we appear to find ourselves at a point where there is "nothing before the law."

PART TWO:

SUBJECTIVITY, THE LAW, AND THE DANGERS OF REPRESENTATION

Having argued that because it is always produced between a moment of resistance and repudiation, the political subject can never be finally totalised by the discourses which would seek to represent it, in this part of the thesis I want to use this idea to construct the first of the two contexts which I believe are relevant to understanding the demand made by many multiracial Americans to have this identity recognised on the next US census. Like the discussion of liberal theories of group rights which follows in part three, the point of this is to highlight the limitations to looking at this demand simply in terms of racial identity and therefore as an issue of racial discrimination. In this respect, where part three addresses this by arguing that an authentic group identity cannot be represented, here the same question is raised by arguing that the subject of discrimination who legitimates legal interpretation cannot be represented either.

In doing so, I begin this part of the thesis by considering the tensions which are at work in the relationship between the law and representation, and in particular in Kant's attempt to address the question of whether the law as an idea of Justice can be apprehended under the order of the representable. For if Kant concludes, as I believe he does, that the idea of Justice can only be gestured at in those "limit situations" where the manifold of sensory experiences exceeds the ability of our imagination to represent them, then our critical attention needs to be focused not on the claim by many multiracial Americans that they have been subject to discrimination through the monological categories which organise America's racial politics, and which can be apprehended under the order of the representable, but instead on the subject of discrimination which cannot be represented as multiracial identity comes to be recognised in America.

The first chapter in this part of the thesis therefore explores the law as a philosophical question of representation, while the third takes this exploration to the point where we as readers start to ask ourselves questions about the identity politics which are brought into play when multiracial Americans attempt to represent themselves as a subject before the law. The conclusion which we will hopefully take from this is that if the law as an idea of Justice is unrepresentable, then the multiracial subject who is recognised by the law is only a particular re-presentation of that idea. In Kant's terms this subject will be "beautiful" in the sense that it can be judged worthy of inclusion on the basis of comparable cases of racial discrimination, but it will not be "sublime" in that it would gesture beyond itself to the idea of Justice to which it cannot be compared and which it therefore cannot represent. Instead, I argue that this idea can only be gestured at through thinking the limits within which racial discrimination can be recognised in current judicial interpretation of the equal protection clause. Thus, it is only in the thought of what must be repudiated within multiracial identity in order for it to be a subject of equal protection that the law as an idea of Justice can be brought within the representable.

I provide the philosophical context which allows this last point to be made through a Derridean reading of Freud's account of the establishment of the law at the primal scene in Totem and Taboo, where the death of the primal father must already be presupposed if it is to represent the possibility of justice. That is to say, by bringing Derrida's critical strategy to Freud's account of the formation of the superego, we can say that the feelings of guilt which the sons experience upon the murder of their tyrannical father inaugurate a law to prohibit incest which a metaphysical logic demands that they must already have experienced. In other words, the sons can only resolve the paradox which surrounds their feelings by presupposing that the father is always already dead. In this respect, they indicate that the relationship between those who interpret the law and the law itself is not one of representation but, instead, one of spectres. Therefore, what

the father demonstrates here is that there is a moment of excess, which, as Kant also shows in his account of the idea of Justice, cannot be incorporated within the foundations of any legal system. To the extent that his murder must remain unrepresented if legal interpretation is to conform to the idea of Justice, he is therefore the prototype of those exclusions within any legal system which even today still bring judicial precedents back to the horizon of their temporality by naming the singular analogy upon which they have been established. I further support this reading of Freud by making a link to Judith Butler's recent work on "gender melancholia." For like Freud's text, the thing that Butler gestures towards is the idea that the foundations of any legal system are haunted by the repudiated possibilities for identification upon which it is based.

As I also suggest in this first chapter, another way of making this point is to explore the critical significance of another interpretive equivocation, this time the one at work in the phrase "there is nothing before the law."¹⁶⁵ That is to say, as another way of creating a context in which to question the idea that recognising multiracial identity is simply an issue of racial discrimination, the purpose of this is to show that *both* the law *and* its subject must be "produced" in the Derridean/Foucaultian sense of this term. That is, their relationship needs to be explored within a critical understanding of limits and their transgression, so that it is only by transgressing the limits of current judicial interpretations of the legal subject that the idea of Justice can be represented.

To understand the implications of this point we need to turn to chapter five, and Derrida's account of judicial interpretation, where he deconstructs the distinction between the violence through which new laws found a state and the acts of judicial interpretation which only appear to conserve them. The importance of this is that it shows those same two faces of the law which we find at the primal scene: the law as an idea of Justice which is not representable and the law as a system of precedents through which this idea is re-presented. The point here is that because the idea of Justice is actually re-presented through the particular racial, gendered, and sexual identity of the

subject around which the precedent is constructed, judicial interpretation is actually an act of violence for which no one can be held responsible.

As we shall see in the third chapter here, such a critical consideration of judicial interpretation is especially important in states with a written constitution such as the US since it is the process of judicial review which sets the identificatory limits within which the idea of Justice can appear. Therefore, since there is no basis for interpretation in judicial review other than the trace of previous cases which are "forced" together into precedents by the act of interpretation itself, these limits are actually refounded with each adjudication. In other words, since every application of the idea of Justice cannot escape the singularity of the subject to which it is directed, Derrida shows that the idea of Justice is never fully present but is instead fundamentally iterative. This view is also supported in chapter five by Derrida's commentary on Maurice Blanchot's essay "The Madness of the Day" where we find that the authority of the law is placed in doubt by the victim of a crime who cannot recall the facts of his case, that is, the subject who cannot make himself present before the law. As this suggests, the most critically insightful way to understand judicial interpretation is as an attempt to manage the "permanent revolution" which is taking place where the centre of its authority - the idea of Justice - is commonly thought to be.

In terms of the case study which follows in part four, where we consider the moment of repudiation which must take place for multiracial Americans to be given equal protection, the point of this is to show that critical agency is always possible within the law. For if the authority of any law is decentred by its performative equivocation between the idea of Justice and the acts of interpretation which re-present it, then the right to distance oneself from identification with an act of judicial interpretation lies within the law itself, that is, within the overdetermination at work in the term "the law" where the idea of Justice must exceed any act of interpretation which would represent it. In other words, it is the inability of judicial interpretation to make the pure idea of Justice

present within its construction of a precedent which ensures that this precedent is in fact a re-presentation of this idea and therefore always already open to the possibility of contestation. Therefore, it is because a Derridean reading of the phrase "there is nothing before the law" refers not merely to the subject who is only created by judicial interpretation but also to the law which is only re-presented in these same interpretive acts, that the idea of Justice remains the basis of critical agency for those identities currently excluded from legal recognition.

Thus, the ability to construct a context from which to critically assess the idea that the demand to recognise multiracial identity can be limited to a question of racial discrimination depends very much on our ability to shift our imagination away from the traditional notion that the law is a field of objectivity which then acts upon an already existing subject as a system of boundaries, and towards the type of aporetic interpretation to which our account of subjectivity in chapter three gestures. As we shall see, this allows us to appreciate that there will be an act of repudiation within any act of resistance in which the demand for Justice is made, something which ensures that the idea of Justice will remain unrepresentable and thus a critical resource for those made abject in this moment.

In addition to Kant and Freud, the other site of traditional political theory through which I construct my critical context here is Hannah Arendt. As I try to show, in her response to the social question Arendt implies that judicial interpretation must be displaced from the actions which constitute the political realm of modern society. This is because, for Arendt, any attempt to represent the idea of Justice raises the same spectre of violence which haunted both the latter stages of the French Revolution and the totalitarian systems of the twentieth century. Nevertheless, as I hope to show here through my account of the tension between the idea of Justice and the acts of judicial interpretation which attempt to represent it, the violence found in judicial interpretation is something which is necessary to a democratic public sphere of the kind which Arendt

has in mind. For if it is the unrepresentability of the idea of Justice which leads acts of judicial interpretation to violently essentialise the subject to whom this idea refers within a particular racial, gendered, or sexually orientated identity, then it is also this same unrepresentability which allows these essentialisations to be critically resisted. That is, it is the very unrepresentability of the universal which makes for a democratically contestable public sphere, one where, contrary to Arendt's position, judicial interpretation is central and not peripheral.

It is, therefore, this critically philosophical context in which we are concerned with the process of resistance and repudiation through which the subject is made-present before the law, which I take as the first of two points of intervention through which to interpret the demand to recognise multiracial identity in America. As readers will therefore see, there is a very straightforward link between the work on subjectivity, power and critical agency undertaken in chapter three and the question of the law and representation addressed here. For it is because the law, as the pure idea of Justice, cannot be represented, that the resources for critical agency are always to be found within the exercise of power, where the exercise of power refers to those acts of judicial interpretation which essentialise the idea of Justice within a particular type of subject. In other words, it is the inability of the law as a system of interpretation to ever equate to the law as a pure idea which means that the subject is never outside of power, but why the resources for critical agency always lie within the exercise of power itself.

In this respect, the work that I do in chapters four and five is integral to the thesis as a whole because it situates my critical analysis of the law in chapter six (multiracial Americans and the equal protection clause) in the context of my discussion of subjectivity in chapter three. Without doing this, I could leave myself open to the suggestion that chapter six needs to be supported by some kind of historical or empirical analysis of race in American law, something which would of course tie the thesis up in all kinds of contradictions concerning its critical strategy.

In addition, while my discussions of Kant, Freud, and Arendt in the next two chapters might suggest to some readers that my critical strategy is perhaps moving away from Derrida and privileging other writers as being of equal importance, the important point to keep in mind here is that because he does not offer a theory but only a strategy of reading, Derrida's position on different issues can be accounted for just as well through a Derridean reading of other texts which raise these issues as they can by reading Derrida himself. In fact, to argue that we must only read Derrida if we want to understand Derrida's position on a particular issue, like the law and representation, is to pursue that same desire for closure which Derrida would argue we ought to resist. It suggests that those making this demand have a fundamental desire to read Derrida as a theorist, one which would confine his critical significance to the metaphysical terrain from which this desire is expressed. In other words, the demand that we should limit our critical use of Derrida to Derrida is a decisively unDerridean move which we should always be working to deconstruct, and the best way to do this, of course, is to remark the trace of Derrida in texts other than Derrida's.

I develop the argument which I have outlined in these introductory comments over the next three chapters. The first looks at the law as an idea of Justice and takes its point of reference from the adventures undergone by the imagination in each of Kant's three Critiques, for it is the limit which Kant places on the imagination which leads us to critically question the relationship which the law can have to representation. The second looks at the implications of this for the law as a system of judicial interpretation. Here we start to explore the politics of the law, in particular the relationship which the law has to the political, and therefore to the questions raised by identity politics. This takes us into the paradoxes which result from the interplay of the two faces of the law, and especially into the relationship which violence has to the possibility of critical agency. Here the treatment of violence and agency in the work of Hannah Arendt allows us to illuminate the difficulty of trying to separate these two faces. Instead, if judicial interpretation is

central to the coming into presence of the political through its essentialisation of the idea of Justice in the subject around which precedent creating cases are constructed, then the relationship which identity politics has to the law concerns the way in which the violence of representing the subject of Justice leaves the possibility of critical agency lodged within the paradox which structures the term "the law."

I reach this point at the end of the third chapter when I call into question the use of reasoning by analogy as a strategy of resistance for subaltern identities. Here I argue that reasoning by analogy makes the dangerous assumption that the idea of Justice can be represented, since it uses the argument that Justice is present in another subject to create a justification for its own claims. In other words, referring back to our conclusions in chapter three, analogical reasoning makes the dangerous assumption that the possibility of critical agency lies outside of the exercise of power. Instead, as I have argued here, critical agency derives from the fact that the idea of Justice must be re-presented.

I use this point to open up one of the issues addressed by the case study, that is, the consequences of separating questions of racial identity from questions of sexual orientation in American anti-discrimination law. Here the use of multiracial identity as an analogy for recognising gay and lesbian sexuality works to foreclose the possibility that gay and lesbian multiracials might be recognised as a subject before the law. That is to say, by taking multiracial identity as a basis for their claim to Justice, gay men and lesbians have assumed that it is possible to separate racial and sexual identity from one another in the constitution of the political subject. Instead, my point here is that the need to re-present the idea of Justice demands that we explore the moment where they intersect. In this respect, although this part of the thesis looks at the recognition of multiracial identity in terms of the relationship between the law and representation and part three looks at this in terms of the demand by liberal theorists of group rights that minority cultures must represent themselves as an authentic subject, they both bring into play the same crucial point which connects my earlier analysis of subjectivity and critical

agency with the case study, which is that because a moment of repudiation is internal to any act of resistance the victim of discrimination never finally gets to speak.

CHAPTER FOUR

SPECTERS OF THE SUBLIME: REFLECTIONS ON THE LAW AND THE POSSIBILITY OF REPRESENTATION

As I suggested in my introductory comments, in this first chapter I want to establish a philosophical context from which to examine the demand to recognise multiracial identity in America. As I noted there, I want to do this by exploring the relationship between the law as an idea of Justice, that is, the law as that which is universal and applies to all subjects, and the possibility of representation, that is, the possibility of representing that idea in our actual everyday experience. In this respect, I begin by offering a reading of Kant's three Critiques in which I focus on that moment when Kant identifies the impossibility of actually representing the idea of Justice in everyday experience. This moment, which we reach in the third Critique when he discusses the circumstances surrounding judgments of the sublime, provides the basis for a series of critical reinterpretations of the possibility of representation, reinterpretations which I trace through the work of Heidegger and Foucault until I reach the point where I see the issue of actually representing the law most fully addressed by Derrida's critical strategy. If, as I argue, the spectre of the sublime haunts every attempt to represent the law, then this alters the critical framework in which we need to understand the idea of Justice.

I set out this framework - one where the resources for critical resistance to legal interpretation remain within the law itself - by offering a Derridean reading of Freud's account of the primal scene in Totem and Taboo. For if the murder of the primal father is intended to represent the appearance of the idea of Justice, the fact that at this moment

the ability of the sons to provide a logical interpretation of their feelings depends on presupposing that he is always already dead, these unfounded feelings of guilt indicate that the idea of Justice will necessarily exceed every moment of legal interpretation. In this respect, the experience of the sons is sublime in the sense that they find that their own moral imagination has nothing to hold onto, only a spectre that remains beyond their grasp (something which, as we shall see, the possibility of all politics depends). The primal scene therefore provides the political context in which the philosophical questions raised by Kant's account of the sublime are played out. In terms of Derrida's recent analysis, it confirms that the law truly is violence without a ground. For in taking Heidegger's account of "thrownness" as a way of explaining the position faced by the sons, I suggest that all future acts of legal interpretation can be characterised by the fact that they have to provide the basis of their own Being.

Although commentators usually focus on his more recent interventions, Derrida has in fact been concerned with the relationship between the law and representation for much longer than this. In this respect, his concern about the possibility of representing the law has always been associated with a concern about the possibility of representation as such. For as Derrida has suggested, "Our word representation is an equivocal word which ought never, according to its etymology, to designate an intellectual object presented to the mind for the first time."¹⁶⁶ As he reminds us, representation is intimately connected with the concept of translation, where we find the desire for an invariable linguistic identity which would keep its same representative content across all of its usages and idiomatic variations. As he notes, "[H]ere language would be a system of representatives or also signifiers, of place holders substituted for what they say, signify, or represent, and the equivocal diversity of the representatives would not affect the unity, the identity, indeed even the ultimate simplicity of the representation."¹⁶⁷ Such an understanding of representation, he adds, is one characteristic of "the world as a field of objectivity for a subject," something without which the institutionalisation of knowledge

would be unthinkable. Thus, what is knowable as an object is determined as such by virtue of the supposed ability of a subject to guarantee the intelligibility of its own representations: its ability both to understand the world as an object and to translate this understanding to others.

In this respect, Derrida suggests that the traditional relationship between the law and representation has followed that between the subject and representation. That is to say, as "a field of objectivity for a subject," the law marks what he refers to as "an instance of the interdictory limit, of the binding obligation, as the negativity of a boundary not to be crossed."¹⁶⁸ Or as he has also suggested, "The law has often been considered as that which puts things in their place, posits itself and gathers itself up in composition, and autonomy in this respect always presupposes representation."¹⁶⁹ Here the law is understood as governing the order of representation, setting limits on identification which the subject may not cross. Under this reading the law is therefore always present before the subject, who is then invented as a legal identity by the law. However, in questioning what he calls the "inflectional contiguity between the I and the we," Derrida also asks whether "it exhausts itself perhaps when we cease representing law to ourselves, apprehending law under the species of the representable."¹⁷⁰ Instead, he suggests that "Perhaps the law itself outreaches any representation, perhaps it is never before us, as what posits itself as a figure or composes a figure for itself."¹⁷¹

Under these circumstances, rather than providing a field of objectivity for a subject, if we adopt the terminology of Derrida's more recent work the law might instead be configured in our imagination as a spectre; so that rather than being present-at-hand it only appears by coming-back. In this respect, rather than governing the order of representation it appears that the possibility of representing the law itself depends upon a kind of limit situation, one whose critical basis we can trace from Kant's account of sublime judgment to Heidegger's account of thrownness and then onto Derrida's aporetic reading of difference.

Taking Kant's three Critiques as a point of departure is helpful because in each of these texts Kant's attention is at least in part directed towards whether the law can be apprehended under the species of the representable.¹⁷² Indeed, in the first Critique it is the conditions which Kant sees as governing the possibility of experience in general which leads him to argue that the law can never be apprehended under the representable. Rather than a field of objectivity for a subject, a boundary or a limit not to be crossed, Kant instead suggests that because it cannot be apprehended first as an intuition the law in fact outreaches any representation. His point here is that the law can be only be represented as a pure rational concept and that because of this it cannot be constitutive of experience. This raises problems, of course, for in order to be effective in the world the law must be able to be experienced. That is to say, the very possibility of freedom and morality depends upon the possibility of bridging the gap between the faculties of intuition and reason. Because of this, the critical challenge which leads Kant beyond the second Critique and to the Critique of Judgment is to bring the law into the order of the intuitively representable.

Given that its existence cannot be justified by the same laws of cause and effect which govern natural phenomena, in the second Critique Kant offers a practical justification for the law, arguing that only on this basis is it possible to postulate the possibility of freedom, which he defines as the condition of standing under no other cause as may appear either in time or nature. As this suggests, justification for obeying the law is here derived from turning the dialectical inferences which Kant had used to legitimate the a priori use of the categories of the understanding into pure rational concepts, and then taking these concepts as the practical postulates of morality. Thus, as its formulation in the categorical imperative indicates the justification for the moral law is derived from interpreting the concept of causality in the light of a practical rather than a speculative use of reason. This leads Kant to the concept of freedom and to posit it a priori as a practical postulate of the moral law, since an a priori concept of causality

admits of no other origin than that provided for by reason alone. Hence the moral law is justified here by Kant because the concept of a free as opposed to an externally determined causality represents the sole possibility of freedom.

However, as its basis in a priori concepts derived from the resolution of the antinomies of pure theoretical reason suggests, although practical reason can justify obedience to the law, as a purely rational construct it cannot show us that the law is an experience which is being felt in the world. Therefore, not only must the law continue to outreach any representation other than that based in reason alone, but its practical justification means that, to use Derrida's phrase, it ceases to function as a limit as soon as we stop representing it to ourselves as such. Therefore, it is in the third Critique that Kant attempts to bridge the gap between the faculties of sense and reason by providing an intuitive rather than a merely practical justification for the law; which he does by exploring the nature of judgment. In his analysis of judgments of the beautiful and the sublime Kant therefore indicates the extent to which the pure idea of the law might be apprehended under the species of the representable.

As a way of organising this analysis of Kant's account of the law, I would like to focus attention on the way in which the relationship between the law and the imagination is formulated in each of the Critiques. The idea for this strategy of reading follows from a suggestion made by Heidegger in his commentary on the first Critique in Kant and the Problem of Metaphysics.¹⁷³ Here Heidegger argues that in the revisions which he makes to the second edition of the Critique of Pure Reason Kant reduces the imagination to the faculty of understanding.¹⁷⁴ Exploring the relationship between the imagination and the law in all three Critiques therefore follows the path taken by Heidegger, but extends the scope of his analysis to the other two Critiques. What is of importance here is the way in which the faculty of judgment analysed in the third Critique confirms that the imagination and the understanding are indeed two separate faculties, the very possibility which Heidegger argues Kant had allowed for in the first edition of the first Critique but

which he then "shrank" away from.¹⁷⁵ What I will therefore try to show here is that in the Critique of Judgment Kant returns to this initial formulation, and also that this position is important to the view of the law offered in this chapter.

As I will try to show, because the estimates offered in the faculty of judgment have no concepts to guarantee the finality of the images apprehended there but only the free play of the imagination and the understanding, they provide the possibility of an intuitive justification for the moral law by drawing attention to those symbolic moments when the manifold of sensible impressions apprehended by the imagination cannot be brought under the categories of the understanding. As we shall see, for Kant the ability to experience any object depends upon bringing the manifold of sense impressions apprehended by the imagination under the rules, such as causality or quantity for example, provided for by the faculty of understanding. It is therefore in those moments when the imagination is unable to totalise the manifold in a single intuition that the faculty of reason is made apparent by the faculty of intuition. Because they cannot be apprehended under such customary categories as causality or quantity, judgments of the sublime therefore relate our intuitive faculty to our rational faculty by pointing to a supersensible realm which exists beyond our understanding. It is therefore at that moment in our sensible experience when the interplay between the imagination and the understanding breaks down and is replaced by a feeling of sublime pleasure that the moral law is present to our faculty of intuition.

The key point here, of course, is that the law continues to outreach the representable, since the inability of the imagination to grasp the manifold as a totality means that the law cannot be apprehended as an object of experience but merely as a subjective feeling through which we again infer its existence. That is to say, we infer its existence and thus universalise our subjective feelings of pleasure precisely from the fact that the sensations given in the manifold cannot be apprehended in a single totality. As we have seen, Kant resolves the tensions within all of his deductions by exploring their

necessary dialectical inferences. It is therefore as a resolution of another antinomy, this time of taste with respect to feelings of the sublime, that the law again finds a practical justification. That is to say, it is from the inability of the imagination to totalise the manifold that we are able to infer the existence elsewhere of such a total representation, and from this we take our practical justification. The only difference here is that the necessity derived from the concept of freedom as the inference of a self-determining causality is replaced by the necessity derived from arriving at a point of sensory experience which is beyond the limits of the imagination.

In each Critique Kant identifies a different faculty of the mind: understanding, reason, and judgment. Because of this the relationship which the law has to the order of representation will be determined by how each of these faculties approaches the question of the imagination. In this respect, it is the way in which the faculty of understanding relies on the imagination to map out the limits to all possible experience which first leads Kant to question whether the law can in fact be apprehended within the species of the representable. As Kant discovers, although it is possible for the understanding to posit a concept on a pure apriori basis, these concepts can only be experienced in the context of intuitions where, following the criteria set out by the categories, they are related to objects. As he points out in one of his examples, "It does indeed, seem as if the possibility of a triangle could be known from its concept in and by itself (the concept is certainly independent of experience), for we can, as a matter of fact, give it an object completely a priori, that is, can construct it. But since this is only the form of an object...the possibility of its object would still be doubtful. To determine its possibility, something more is required, namely, that such a figure be thought under no conditions save those upon which all objects of experience can rest."¹⁷⁶

Therefore, in the case of the concept of a triangle, it is only when the imagination has formed the schemata of a three-sided figure that this concept (which might have been thought a priori under the category of quantity) can be experienced in the intuition of an

object called a triangle. In this example, then, it is the way in which our intuition of a triangle leads us to form the representation of three-sided figures which allows us to experience the pure concept of a triangle. By constructing the schema of a three-sided figure the imagination therefore establishes a general idea of what the pure concept of a triangle would be like in our sensory experience. Kant also refers to this general idea in more analytical terms as the predicate which forms the major premise of the logical syllogism. He gives a similar example in the case of the concept of a dog, where the predicate of having four feet forms the major premise in the identification of dogs in the manifold of our sense impressions.¹⁷⁷ The important thing here, however, is that for pure concepts to be said to exist they must be connected with an equivalent intuition found in our sense impressions. Without this we cannot find the object which would give them meaning and significance.¹⁷⁸ For as Kant maintains, "that the concept precedes the perception signifies the concept's mere possibility; the perception which supplies the content to the concept is the sole mark of actuality."¹⁷⁹ Therefore, in order to be meaningful and so effective in the world the existence of a thing must be related to an experience of it, or as Kant puts it, "Our knowledge of the existence of things reaches, then, only so far as perception and its advance according to empirical laws can extend."¹⁸⁰

Another way of expressing this is to say that by themselves the categories only allow us to formulate pure schemas, which in the case of the category of quantity would be number. The pure schemata of quantity would thus be the idea of the successive addition of homogeneous units.¹⁸¹ In this respect it is a purely intellectual synthesis, which as Kant points out, "is carried out by the understanding alone, without the aid of the imagination."¹⁸² In contrast, the synthesis represented above in the examples of the triangle and the dog are figurative syntheses, where the imagination, as "the faculty of representing in intuition an object," is brought into play with the understanding.¹⁸³ Therefore, it is because the limits to what can be experienced lie precisely in what the

imagination can apprehend in the manifold of empirical sensations, that in the first Critique the imagination indicates that the law is in fact beyond the boundary of the representable. That is to say, it is because our experience of things has to begin with those intuitions which are formulated in the imagination, so that our faculty of understanding can only speculate on the possibility of what can be intuited, that as a purely rational idea the law cannot be identified within the order of the representable.¹⁸⁴

Kant addresses the consequences of this in the second Critique, where the justification for the purely rational formulation of the moral law is given in an elucidation of its practical consequences. That is to say, because it does not refer to any possible object the justification for the law is not found in the speculative extension of our theoretical knowledge but rather in the conditions which are made possible by its practical employment. In other words, Kant looks to show how the moral law can be effective in our experience even though it cannot be related to any empirical sense impressions. In this respect, its justification lies in the fact that it allows us to postulate the possibility of freedom, which is to say that in order to be free an otherwise finitely rational being must be subject to no other cause than that provided by reason itself.¹⁸⁵ As I noted above and as we have seen in the preceding footnote, Kant deduces the possibility of freedom by taking the inference which he uses to resolve the antinomy which is present in the employment of causality to our sensory experience, the necessity of a self-determining as opposed to an externally determined causality, and turning it into the pure idea of morality.¹⁸⁶ As he notes, "The concept of cause originates exclusively in the pure understanding....As independent in origin from all sensuous conditions, it is in itself not to be restricted to phenomena, so that...it could certainly be applied to things as pure beings of the understanding....I have this right by virtue of the pure nonempirical origin of the concept of cause."¹⁸⁷ The non-empirical origin of causality therefore allows Kant to separate the existence of the law from the necessity of its empirical experience without bringing into question our duty to obey it.¹⁸⁸ In other words, it is because it is subject to

no further cause than reason itself, and therefore the only imperative in which the freedom of each can be harmonised with the freedom of all, that obedience to the law can be justified simply by pointing to its practical necessity rather than the ability to find it in our field of sense impressions. In comparison to the first Critique, therefore, the justification of the moral law lies in the fact that it makes freedom possible rather than in the fact that it extends the framework of our theoretical knowledge.

It is because of this that the imagination plays no part in the Critique of Practical Reason. As Kant points out, in the case of the law of freedom, "no intuition and hence no schema can be supplied for the purpose of applying it in concreto. Thus, the moral law has no other cognitive faculty to mediate its application to objects of nature than the understanding (not the imagination); and the understanding can supply to an idea of reason not a schema of sensibility but a law."¹⁸⁹ Thus, because the law is a purely rational idea whose justification is always practical from the point of view of freedom, the formulation of the moral law in accordance with the self-determining principle of causality has the same effect on the imagination as the use of the imagination in speculative reason had on the law. The significance of this, however, is only brought out in the third Critique, where Kant explores the faculty of judgment as a way of addressing the possibility which the first two Critiques appeared to foreclose: the possibility of apprehending the moral law as an object of our intuitions. For although the second Critique provides a practical justification for feeling the law as a duty this still does not reveal how we experience the law, and therefore that it is indeed capable of being experienced. Until then, as we demonstrated above, there is no guarantee that it has meaning and that it has achieved a critical significance.

The Critique of Judgment therefore explores how in its attempt to apprehend the manifold of empirical sensations the imagination might provide an insight into the moral law even though the moral law itself cannot be apprehended under the species of the representable. For if the faculty of understanding is about the speculative application of

reason to nature with the intention of extending theoretical knowledge, and the faculty of reason is about prescribing moral laws by proving the practical necessity of holding certain concepts such as freedom as existing a priori, then the faculty of judgment is about relating the imagination to each of these faculties and providing an aesthetic justification for not merely what can be but also for what cannot be experienced. Therefore, in the case of judgments of the beautiful, as the faculty of intuitions the imagination provides the conditions for these by allowing the manifold of sensations to be brought under those categories of the understanding through which they are given a formal finality as objects of thought, that is, apprehended in a single intuition, while in judgments of the sublime it is the inability of the imagination to apprehend the manifold as a single intuition which gestures at the logical and practical necessity of purely rational concepts.

Judgments of beauty therefore focus attention on the subjective feeling of pleasure which appears when our imagination is able to comprehend the manifold of sense perceptions in a single intuition. In contrast, judgments of the sublime focus attention on the mixed feeling of displeasure and pleasure which appears when our imagination is in fact unable to totalise the manifold in a single intuition. The link between the two faculties of judgment is that it is only through the strivings of speculative reason towards a more total representation of nature that the limits of our imagination appears. Therefore, it is when the imagination attempts to comprehend a magnitude which falls beyond that which can be taken in as a single intuition and thus represented within an estimation of beauty that a feeling of the sublime is awakened within us. As Kant notes, such feelings are commonly encountered by those attempting to apprehend the Pyramids or St. Peter's in Rome.¹⁹⁰

The consequent difference between the two judgments is therefore that estimates of beauty are only able to judge the form of an object, whereas judgments of the sublime can gesture towards that for which no objective form is adequate.¹⁹¹ Therefore, on the

one hand judgments of beauty do not outreach the limits of representation because they are only dealing with questions of relative magnitude, whereas on the other hand judgments of the sublime completely outreach the representable because they refer to that which is beyond compare. The limits of the imagination are reached in the latter case because here judgment no longer has any point of reference in our senses from which to synthesise a standard of comparison. Judgments of beauty, however, are always able to furnish comparisons because their focus on the form in which an object appears means that they are always within what is representable. The point here is that the imagination falters in judgments of the sublime because what is pleasurable in a sublime object cannot be found in its form but only in the state of mind which the attempt to apprehend it creates.¹⁹²

Therefore, as the reference to St. Peter's in particular suggests, the importance of the sublime lies in the fact that the feeling which it produces circumvents the basic requirement of Kant's system that representation must pass through the faculties of intuition and understanding if it is to be considered as experience. That is to say, its importance derives from the fact that Kant believed that art was able to symbolise the supersensible ground of things which existed beyond our understanding. Thus, sublime works of art such as the frescos in St. Peter's allow us to experience pure ideas because their representation does not require a corresponding object to be present before our sensibility. In this respect, what is particular about art when it is sublime are the aesthetic ideas through which the supersensible is revealed, since these are ideas which "language can never quite get on level terms with and render intelligible."¹⁹³ The important thing about aesthetic ideas, therefore, is that they reflect the operation of the imagination when it is no longer under the discipline of the categories of the understanding, since it is this discipline which breaks down in moments of the sublime. Therefore, it is the way in which aesthetic ideas make the work of art overflow in the play of many possible objects which awakens in us an idea of the supersensible. In other words, it is because what

sublime art puts into symbols and gestures at metaphorically cannot be reduced to any one object of sense that it is able to point beyond the understanding and towards those pure ideas which Kant identifies with the moral law. Indeed, Kant suggests that it is only pure reason which is able to find a meaning in aesthetic ideas.¹⁹⁴

Therefore, the ultimate justification for the moral law from the point of view of judgments of the sublime is that it is from the inability of our intuitive faculty to apprehend the manifold of sense impressions in a single image that we deduce the necessary possibility of a supersensible and therewith moral realm beyond it. As Kant remarks, "the feeling of the unattainability of the idea by means of the imagination...compels us subjectively to *think* nature itself in its totality as a presentation of something supersensible, without being able to effectuate this presentation objectively."¹⁹⁵ The point here is that in feeling the imagination to be inadequate we have shown that we have achieved the thought of something which exists beyond our intuition and which instead gestures towards the supersensible. What we therefore become aware of in a feeling of the sublime is our own rational faculty and through this that there is a faculty of supersensible ideas which exist outside of nature. As Kant puts it, "Sublimity, therefore, does not reside in any of the things of nature, but only in our own mind, in so far as we may become conscious of our superiority over nature within, thus also over nature without us (as exerting influence upon us)."¹⁹⁶

To take this analysis of the sublime slightly further, we should also note that it is significant because it helps us to highlight the importance of Heidegger's criticism of Kant in Kant and the Problem of Metaphysics. To recall, here Heidegger uses the tension between the account of the relationship between the imagination and the understanding given in the first and second editions of the first Critique to explore the conditions which govern human existence in terms of its possibility-of-Being. As we know, Kant argued that it was only possible to have experience insofar as knowledge of an object was not located in the object itself but rather in the mind of the perceiving subject. Thus, without

the concepts which organise the meaning of objects existing in them a priori, the presence of the understanding alongside the imagination to give direction to the synthesis of the manifold of sense impressions was necessary if experience was to take place. Crucially, of course, Kant argued that this also applied to the subject's self-experience. For rather than being able to experience itself directly as a subject, the subject could only be experiencing itself through the categories of the understanding. In other words, the possibility of self-knowledge depended upon accepting that there was something about the subject which remained unknowable. The subject could therefore experience itself through its understanding but this in turn meant that it could only know itself as an object.

As a result, establishing the conditions for human beings to come into Being requires an existential analysis of the relationship between the imagination and the understanding. The fact that the imagination is presented by Kant in the first edition of the first Critique as a separate faculty, the faculty of intuitions, rather than as part of the understanding where the synthesis of the manifold is presented as the logical application of the categories to sense experience, therefore forms part of Heidegger's justification for arguing that Being is originally Being-in-the-world inasmuch as the imagination and the understanding are two separate faculties of experience which must be brought together if human beings are to experience themselves as subjects. For as Heidegger notes, "In transcendence, Dasein shows itself in need of the understanding of Being. Through this transcendental neediness, properly speaking, "care has been taken" to see that something like Being-there can be. It is this innermost finitude that sustains Dasein."¹⁹⁷

In this respect, the sublime is important because it returns human existence to itself insofar as its ownmost possibility of Being lies in the two faculties of imagination and understanding which only together allow the experience in which the human being is revealed as a subject to take place. In other words, the sublime is that sense of thrownness or falling which Heidegger suggests human beings experience when they

reflect upon the possibility of their own existence and find that they are unable to formulate that object which links sensible intuition to a concept without the assistance of the categories of understanding. For as we see here, a sublime reflection is one which leads to the conclusion that the range of possibilities for existence which we find in the manifold of sense impressions exceeds the ability of the categories to unify them under a single intuition. Therefore, the sublime is an experience of being thrown or falling because in "representing" a manifold which cannot be brought under the categories it shows that without the interplay of the imagination *and* the understanding no experience of objects is possible, including that self-objectification which is essential for the experience of subjectivity. It is therefore not in the free play of the imagination and the understanding that our sense of falling is made manifest but rather in our inability to bring the imagination before the understanding, something which as Kant shows takes place in the experience of the sublime. For as we see here, in the sublime the inability of the imagination to apprehend the manifold in a single intuition shows that such categories as causality or quantity which allow us to understand sense impressions as the experience of empirical concepts have been suspended.

As Kant's resolution of the antinomies which affect the three faculties of our mind suggests,¹⁹⁸ there is a sense in which bringing the subject before the law requires the presence of a "limit situation." In this situation, as we see in Kant's resolution of the antinomy which surrounds judgments of the sublime, resolving the logical conflict which arises in our sensible experience requires us to "presuppose" the existence of a supersensible realm. This realm must, however, be posited only as an idea, that is, as a concept whose content must remain indeterminable. For while the ability to infer its existence from our sensible experience gives this experience a universal validity, to say something further about this realm would take the possibility of such experience away from the experiencing subject and place it in the object. Hence, the idea that the objects of our intuition are related to a pure though unknowable concept must not simply be

presupposed, rather such a presupposition is necessary if in our experience of objects the logical coherence of our understanding is to be preserved. It is this sense, then, that because they require such a presupposition that the inferences which allow us to resolve the antinomies are really limit situations. Paradoxically, they require that we step outside of the finite limits which the imagination places on our experience in order for that experience to remain within reason.

Thus, in judgments of the sublime Kant leads us to conclude that in order to be able to infer the existence of the moral law from the inability of our imagination to apprehend the manifold of sense impressions we must already be predisposed towards that temper of mind which we would call moral.¹⁹⁹ In other words, in order for our feeling that we have reached the limits of our imagination to register as an understanding that we are governed by our rational capacity we must presuppose that such a capacity does in fact exist, although all we have to go on are the inferences which the failure of our imagination allows us to make. Indeed, it is as if the failure of our imagination retroactively installs our rational faculty as a way of explaining the feelings which have just appeared in our experience. For in and of itself these feeling are illegitimate; they only become legitimate through the constitutive effect which their performance has on our rational faculty. Thus, in order to be legitimate every experience must, in its performance, presuppose its dialectical opposite. It is then as such a presupposition that it affirms the validity of our experience while remaining unknowable through it. Therefore, Kant's account of the sublime suggests that our experience of the law is something which takes place at a limit situation where the subject finds itself before the dialectical inferences which it has to make in order to bring a logical coherence to its existence.

Because of this, there is a sense in which judgments of the sublime are consistent with Foucault's idea of a "limit experience."²⁰⁰ For in experiencing the limits of our imagination we also conduct an experiment into the limits of the law, one where we discover that the law itself is limited to the logical presuppositions which our

understanding must make in order to make sense of feelings for which there are no precedents in our experience. In this respect, an experience of the limits of our imagination is dialectically related to an experience of the law as a limit. Of course, because the law itself is only an indeterminate idea which validates experience, this dialectic is not one which leads to a final determination of what the law is in itself but rather to the kind of non-final affirmation which Kant foresees in the infinite extension which reason achieves when it takes the sublime as an instrument of theoretical knowledge.

To take another of Foucault's formulations, the relationship between the imagination and the law is one where the limit is intimately related to "transgression," for it is only through the transgression of our imagination that the law appears as a limit.²⁰¹ In this respect, the relationship between the imagination and the law in sublime judgment is best described by Foucault when, in a review of the work of Maurice Blanchot, he refers to the law as the shadow of the advancing gesture which is however the shadow towards which all gestures must necessarily advance.²⁰²

In Being and Time, Heidegger takes up this question when he relates the idea of a limit situation to the indefiniteness which surrounds the experience of death. Where the mental state which discloses this situation is one of anxiety, Heidegger suggests that this "unveils the nullity by which Dasein, in its very *basis*, is defined."²⁰³ It is here that Heidegger believes that human existence gains its authenticity as being first of all a potentiality-for-Being, one in which human beings are abandoned to themselves.²⁰⁴ As he points out, the present gets lost in the "they" unless it gets brought back from "the current Situation" by "the primordial 'limit-Situation' of Being-towards-death."²⁰⁵ What I want to suggest here is that a feeling of the sublime represents a limit situation insofar as, like our experience of the indefiniteness of death, it places us before our own potentiality-for-Being-a-whole. For the feeling of displeasure combined with pleasure which we experience in the face of the sublime is consistent with the self-control which human

beings achieve when they resolve to organise their way of Being around the anticipation of that whose horizon is immanent but which must nevertheless remain indefinite.²⁰⁶ Here the anticipation of death simulates "something like" a supersensible realm insofar as it is a situation which brings together past and future to give meaning to the present. In other words, Heidegger's account of death is the most compelling ontic testimony of the possibility of the supersensible. Therefore, when it realises that its imagination has been outreached by an experience which cannot be grasped in an empirical intuition, the human being finds that its potentiality-for-Being has been released towards the indeterminate though the supersensible idea of death.

The difference between Kant and Heidegger here is that Kant maintains a distinction between the sensible and the supersensible which Heidegger's turn to death as the ontic origin of Being as Being-towards de(con)structs. Death is therefore supersensible in Heidegger's account insofar as it offers a horizon for Being; but it takes us further critically than Kant in that it situates this horizon within the sensible-ontic realm itself. This is why I hesitated slightly above when in comparing Kant and Heidegger I suggested that death was "something like" a supersensible realm.

Derrida of course takes this critique a stage further, for whereas Heidegger believes that the totalisation of Being-as-a-whole remains possible within the anticipation of death inasmuch as all equipment finds its authentic Being within the horizon of time, the temporality implicit in the horizon through which we experience terms such as *differance* suggests that the logical antinomies which surround this experience are not reducible either within time or through an appeal to such presuppositions or deductive inferences which appear in sublime judgment. Instead, because we can never guarantee any inference that we might make about the pure concept of *differance* from our sensible experience of it, the antinomy which we face is irreducible.²⁰⁷ In Heidegger's case, the play of difference within *differance* suggests that even the sensible experience from which the ontic priority taken by the analytic of *Dasein* begins will necessarily do so in a

moment of displacement, thereby leaving the conditions required for the totalisation of Being both inside and outside the temporality of the present moment. The point here, then, is not simply that the supersensible is always thought from within the sensible as Heidegger demonstrates, but that it is thought through a moment which itself must renounce thinking.

In the case of Kant, if we again follow the implications required by his reading of difference, Derrida's vital contribution here might be seen as pointing out that the supersensible is not indeterminate because we cannot know it but rather because we have too much knowledge of it. In fact, it is not so much indeterminate as overdetermined. As Derrida shows, the supersensible realm of any term, its signified, is determined by the location of its signifier or sensible appearance, which as he demonstrates is entirely governed by the system of differences which are brought to bear at the moment of articulation. So with the term difference, its supersensible signified remains indeterminate not because it outreaches our imagination but because we can never be sure whether it really refers to difference or difference. The crucial implication of this can therefore only be that our experience of the supersensible and with it the moral law is always singular. That is, as a signified it can only be represented through the system of differences which each signifier or plaintiff case brings before it. It is therefore because of the overdetermination of the supersensible at the point of its articulation that we can say that there is nothing before the law, remembering that we must read this phrase twice for both its passive and active determinations. Therefore, we can say that while the law as a system of precedent based rules - the law as Right - will be deconstructible, the law as a supersensible idea - Freedom, Justice, Equality - is not since it will be the moment of deconstruction; and it is this combination which Derrida has indicated may be a stroke of luck for politics and in fact for all historical progress.

Thus, even while it remains unrepresentable as it does in Kant's formulation, Derrida's approach to the supersensible offers an open invitation for everything in our

sensible experience (including that which is left unintuited in order to set it in motion) to claim a right to represent it. Therefore, through his account of the play of difference in difference, Derrida, like Heidegger, deconstructs Kant's distinction between the existence and the experience of a thing, though, in a more radical fashion than Heidegger, he reformulates it to give a more democratic basis to experience. Indeed, it is not out of place here to say that because of difference every attempt to apprehend the manifold of sense impressions must invite a judgment of the sublime, for it shows that there is never a point at which the understanding can reduce the manifold to a single intuition. As this suggests, the understanding is itself the violent imposition of a single logical imperative onto that which cannot be thought through logical categories. That is to say, the play of difference within difference shows that the understanding is an assumption made by metaphysics in its search for a centre, since it is the rational categories of the understanding which centre our empirical experience in a scheme image. Putting Kant's critical ontology through the logic of deconstruction, however, allows us to see that the attempt to apprehend any term will in fact open that term up to the indeterminacy of the supersensible and therefore to the possibility that it might be experienced as sublime. Derrida, of course, calls this possibility iteration.

The general point which I am trying to reach through this discussion is that respect for the law as a limit can only emerge within what Heidegger describes as an existential "concern" that the "there" of our Being-there can be. That is to say, a certain pre-ontological feeling of limitation must in fact already be present for us to be able to experience the law as a limit. In other words, respect for the law emerges not from the fact that the law is a limit, but from the fact that its "thingness" is bound up with the phenomenological disclosure of our Being. For as Heidegger suggests, "The manner in which self-feeling from time to time makes the self manifest, i.e., the manner in which it lets itself be, will always be codetermined essentially through the character of that for which the feeling [being], in the self-feeling, has a feeling."²⁰⁸ Thus, where human

existence is only disclosed in having-a-feeling for, this reflects an original "Being-limited" which is defined by its disclosure through the "there." This is what we have already referred to more simply as dwelling or the gathering together of equipment.

Therefore, with specific regard to the law Heidegger proposes that "The law is not what it is because we have respect for it, but rather the reverse: this respecting having-a-feeling for the law, and with it this determinate manner of making the law manifest, is the way in which the law, as such a respecting having-a-feeling for in general, can be encountered by us."²⁰⁹ His point here is that, as he suggests, "the law as much as the acting self is not to be apprehended objectively."²¹⁰ Instead, for human beings who in their uniqueness find that they can come to question the possibility of their own Being, this self is only experienced through having-a-feeling for the law. Meanwhile, of course, the law is only experienced through the presuppositions which an existential anxiety over the indeterminacy of the "there" leads us to imagine.

As we might guess, a Derridean reading of this would again attempt to take it one stage further. That is to say, although our respect for the law must presuppose a feeling of concern for the law as it relates to the phenomenological structure of our disclosure, Derrida's reading of *differance* suggests that this feeling of concern must also incorporate a feeling for the unthought which must persist within any Being-towards. Therefore, our experience of the law is not mediated simply by an existential anxiety that something like the "there" of Being-there can be; it is also mediated by an anxiety that Being-there also involves a "Being-not-there."²¹¹ A feeling of respect for the law will therefore not simply be codetermined by a concern for the there, rather it will be overdetermined by the not-there as the kind of non-identical sameness which we find in the existential analysis of *differance/difference*.

Judith Butler has perhaps given the best formulation of this extension of Heidegger's critical ontology in her use of the phrase "melancholia," where she connects Derrida's own critical ontology of the "trace" to Freud's psychoanalytic treatment of

loss.²¹² Under Butler's Derridean reading, melancholia is no longer an abnormal reaction but rather a permanent condition which allows psychoanalysis to be repoliticised. Thus, where the not-there is the trace of difference in differance, any representation of differance to the "law" of a supersensible meaning will always be overdetermined by a repudiation which cannot finally be disavowed, but which persists as an attachment which is elemental to Derrida's own understanding of Being-there. In her own work, Butler looks at this in terms of what she calls the "gender melancholia" which comes into play when a political and judicial system founded upon presuppositions of heterosexuality exerts its criteria for equality before the law.²¹³ Under these circumstances, identification with the law will be overdetermined by the trace of a repudiated sexuality which must persist in any claims which gay men and lesbians make for equality before the law; the point here being that any claim which they make for equality cannot be made from the subject position of a gay or lesbian sexuality.

As a way of concluding this chapter, we can give a focus to the issues we have been exploring here by turning to a certain problem which is raised by one of Freud's interpretive moves in Totem and Taboo, where he attempts to give an account of the origin of the incest prohibition: the moral law which first founds society. He begins this by suggesting that if we examine the type of primal horde sketched out by Darwin, all we find is "a violent and jealous father who keeps all the females for himself and drives away his sons as they grow up."²¹⁴ The question which Freud therefore poses is how can the types of social organisation which appeared to be the next evolutionary step after this, in which there were tribes and bands "composed of members with equal rights," have appeared?²¹⁵ In response, Freud proposes that even while the sons hated their father because he represented the barrier to their own sexual desires they still admired him, a fact attested to by their act of emulation. Because of this, Freud suggests that when they finally joined together and gathered up the courage to kill him they "were filled with the same contradictory feelings which we can see at work in the ambivalent father-

complexes of our children and of our neurotic patients."²¹⁶ As Freud points out, "A sense of guilt made its appearance, which in this instance coincided with the remorse felt by the whole group."²¹⁷ In this respect, they revoked their deed by both forbidding the killing of all totems which came after the father and by renouncing its fruits: their claim to the women who had now been set free.

Although it might not be immediately apparent, from within the strategy of reading which we have adopted in this chapter the issue which arises here is that the murder of the primal father appears to transgress the moral law, yet at the moment when it is transgressed this is a "limit" which does not yet exist. That is to say, as an example of one of Derrida's aporias or as we have also referred to them here irreducible antinomies, the murder of the father inaugurates a law which it in fact already presupposes. The key difficulty here is the feeling of guilt, which is common to both the act of murder and the moral law; it is this "trace" which constitutes the aporia. For on the one hand the killing of the primal father creates the sense of guilt which establishes the law. However, it can only do so by presupposing that this law already exists. Thus, the murder of the father appears to retroactively install the moral law as a way of explaining the feelings which it gives rise to, just as the failure of the imagination in the experience of the sublime appears to retroactively install the same moral law within the subject as a way of explaining the feelings which arise here. The moment in which guilt is felt is therefore in some sense a limit situation insofar as its relationship to the moral law gestures towards Foucault's understanding of transgression. For although the sons' sense of guilt suggests that a limit has been transgressed, like judgments of the sublime it is a transgression which itself presupposes a limit. As this suggests, in its relationship to the imagination the law is neither present nor absent but rather constantly affirmed, although not in a way which allows for a final determination.

What I want to show here is that we can also illuminate the difficulty of accounting for the appearance of the incest prohibition by situating the primal scene

within Heidegger's argument that the essence of what it is to be human lies in "thrownness." That is to say, we can better understand the guilt which is experienced by the sons who murder their father if we interpret their paradoxical position of being both before and not before the law in terms of their Being-thrown in the same way that human existence is by virtue of its already Being-in-the-world. For as Heidegger says, "In being a basis - that is, in existing as thrown - Dasein constantly lags behind its possibilities. It is never existent *before* its basis, but only *from* it and *as this basis*. Thus, "Being-a-basis" means *never* to have power over one's ownmost Being from the ground up. This "*not*" belongs to the existential meaning of "thrownness."²¹⁸ The point here is that in not being able to account for the origin of their feelings of guilt the sons then mirror the way in which, in their authentic existence, human beings are released to being the Being of their own basis. Like the human Dasein, their inability to explain their feelings ontologically means that they never have power over their ownmost Being. Instead, this lack of power is the existential meaning of their thrownness. For as Heidegger then adds, "The character of this "not" as a "not" may be defined existentially: in being its *Self*, Dasein is, *as* a Self, an entity that has been thrown. It has been *released* from its basis, *not through* itself but *to* itself, so as to be *as this basis*. Dasein is not itself the basis of its Being, inasmuch as this basis first arises from its own projection; rather, as Being-its-Self, it is the *Being* of its basis."²¹⁹ In other words, the primal scene which Freud describes is, in its performative paradox, one where the sons have been released into being the basis of their own Being. As such, without any ontological markers to hold onto they experience their Being as thrownness.²²⁰

We can of course relate this analysis to the one we have just given of the sublime insofar as the experience of thrownness at the primal scene represents a limit experience which opens onto the indeterminacy of the law as an idea. For like the imagination which is unable to fully apprehend the manifold of sense impressions which confront it, the sons who murder their father find that they are both before the law and not before the law.

That is to say, their experience is sublime insofar as the feelings which they encounter have no equivalent within their sensible experience with which they can be compared. Their feelings tell them they are before something supersensible yet they are unable to represent it. In this respect, the limit which they experience is also an experiment, one where the limit is, as we have seen, only revealed when the ability of the imagination to apprehend the manifold of sense impressions is transgressed. We might therefore say that because it is caught up in the play of presuppositions which structure the use of Kant's deductive logic, the law of incest prohibition becomes the specter towards which their imagination advances, but which since it cannot be represented remains the specter of their advancing imagination.²²¹

It is in this context, where being thrown is the basis of one's Being, that we can give a better interpretation to the feelings of guilt experienced at the primal scene. In Being and Time, Heidegger argues that human beings are originally guilty in their way of existing since their Being is only revealed through the "there" which is gestured at in Dasein's formulation as Being-there. Guilt is therefore related to the phenomenological way in which the existence of human beings is revealed. The point here is that when human beings represent themselves as existing by apprehending the "there," which they do by synthesising the manifold into a single intuition, this representation of the "there" as a sensible object enacts a certain violence on their ownmost potentiality-for-Being.

Therefore, when human beings experience a sense of guilt it arises from the fact that their way of Being must involve them in, as Heidegger suggests, wanting to have a conscience because of the way in which existence is organised around Being-there. Thus, Heidegger argues that "The idea of guilt must not only be raised above the domain of that concern in which we reckon things up, but it must also be detached from its relationship to any law or "ought" such that by failing to comply with it one loads himself with guilt."²²² Therefore, we can say that the feelings of guilt experienced at the primal scene were not related to the prohibition of incest as a law which had been transgressed, but to

the reflection that the father must always already be thought of as dead, so that these feelings can only be explained by evoking his specter. The implication of this of course is that, contrary to the usual interpretation of the oedipal conflict, the law does not originate with the intervention of the father, but only at the moment when he comes back. Always already dead, the father originates the law by coming back, conjured up in that sublime moment when our feelings of guilt transgress the limits of our imagination.²²³ Indeed, we can say that the dead father is the specter towards which the law advances, and that he is therefore the specter of its advancing imagination. In this respect, he may in fact be a stroke of luck for politics and indeed for all historical progress, since he makes the relationship between the law and the representable depend upon our first of all feeling guilty for nothing.

In terms of our earlier discussion of Kant and judgments of the sublime, the tensions which we have seen surround the primal scene therefore support the argument that the law itself outreaches the species of the representable and is instead only revealed in those limit situations where the ability of our imagination to apprehend the manifold of sense impressions which appear before it is exceeded. Of course it is not the law which is revealed here since as a pure idea (the idea of Justice) it exceeds the conditions which Kant sets out for any and all experience. Instead, what are revealed in judgments of the sublime are signs of the law which substitute for the law's essential absence. It is these signs which then provide its practical justification. Thus, the feelings of guilt experienced at the primal scene were also judgments of the sublime. For here the law is also essentially absent and its justification therefore ultimately practical from the point of view of freedom. It is because the sons were unable to imagine the act of murder as the transgression of an existing law that their feelings can only be justified in these terms. However, as Kant reminds us, because the subject is finitely rational a practical justification is never sufficient to ensure that the law will be represented in our sensible experience; the closest that we come is in those judgments of the sublime where the law

still exceeds the representable. Therefore, although the law may be practical, in Derrida's terms it will never be just because the antinomies which must be resolved are irreducible. In this respect, it is not merely our finite imagination or our original Being-guilty, but more significantly our Being-melancholy, which ensures that the law will remain outside the species of the representable. This much, I think, is apparent from the situation of the primal father who must be thought of as always already dead, and who, as the condition of its possibility, unsettles the authority of every judicial decision. In this respect, as the subject upon which the pure idea of the law might be grounded, he helps us to see that the conditions for resisting any judicial exclusion always lie within the law itself. Thus, as we have tried to emphasise here, he may be a stroke of luck not only for politics but also for all historical progress.

CHAPTER FIVE

THE VIOLENCE OF THE LAW: JUDICIAL INTERPRETATION AND THE QUESTION OF THE POLITICAL

Having just argued that the pure idea of the law cannot be represented, in this chapter I want to explore the consequences of this for the relationship between judicial interpretation and violence. This will allow us to reconfigure the relationship between the law and politics, so that judicial interpretation can be seen as a site where the boundaries of the political are constantly brought into question. What I have referred to as the violence of the law therefore refers to the way in which judicial interpretation forces a certain closure on the essentially contested character of the political. As we shall see, this violence takes place because the subject of discrimination identified in judicial interpretation is never equal to the pure idea of Justice which, in its universality, is unrepresentable. Violence therefore always inheres in judicial interpretation because the subject through which justice is represented is always singular in its racial, gender, or sexual identifications - identifications which then close out the otherwise essentially contestable boundaries of the political.

In this chapter, I develop this argument firstly by contrasting Derrida's understanding of violence as the performative force which inheres in act of representation when this act is governed by metaphysical assumptions, with Hannah Arendt's attempt to separate violence from politics by reserving the term power of the performative acts through which individuals appear together. Secondly, I show how Derrida's understanding of violence has permitted him to reconfigure the critical parameters of judicial interpretation so that through their performative force they now raise the very question of the political itself.

Finally, returning briefly to Arendt, I illustrate the consequences of this by focusing on the limitations at work in her attempt to exclude violence from the political, something which we find in her critique of the French Revolution and the way it made the social question the focus of the modern public sphere. Here I contrast Arendt's account of revolution with Derrida's account which is based on his understanding of iterative as a repetition within difference. As I conclude, if Arendt is really serious about identifying the conditions which make a democratic public sphere possible, then she must accept that a moment of violence will inhere on any site through which the political is represented.

As I noted above, traditional interpretations of violence have focused on separating violence from politics. This is done by using violence to describe the instrumental use of reason, and reserving the term power to describe political action. Power is therefore political whereas violence becomes essentially non-political. For theorists such as Hannah Arendt who adopt this position, violence can command obedience, as the system of Nazi bureaucracy proved, but it can never represent the nature of politics which as acting together presupposes a relationship of equality and therefore freedom.²²⁴

However, where Arendt looks to separate violence from politics in order to offer a critique of instrumental reason, which she does by reserving the word power for the common world generated by individuals acting together, Derrida looks at violence in terms of the structures of repudiation which makes any acting together - the kind of acting together which we found in our discussion of the primal scene - possible. In doing so, he evokes the notion of "force" to denote the violence which he sees in any Being-towards.²²⁵ In this way, violence for Derrida is analogous to what Foucault describes as a relation of forces, though as he emphasises it is the unity of signification and not simply the fact that power is decentred which is important.²²⁶ Power in Derrida's terms therefore only exists when the "together" of acting together is constituted through the repudiations

which are part of any Being-towards. In other words, power as acting together does not exist outside of the violence involved in the acting-towards in which the "together" is constituted.²²⁷

Violence therefore refers to that more fundamental relationship to knowledge which Foucault describes as the "scene of power." In this scene, repudiated identifications constitute the system of differences or equipment context in which the acting subject appears in its Being. Violence is therefore present in the space from which Being is sent out, so that it is inherent in any Being-towards as this term would be understood in Derrida's version of phenomenology.²²⁸ It is therefore only once the "scene of power" has been staged that the distinction which Arendt draws between power and violence becomes intelligible. In contrast, Derrida's notion of force points towards a more basic violence which is internal to the operation of metaphysics in its way of situating Being in what is simply present-at-hand. In failing to question of the possibility of the "together" of acting together, metaphysics therefore forgets its own internal relationship to violence.

We can perhaps appreciate this point a little better if we try to relate Derrida's discourse on force to his reflections on the name. Ever since his encounter with the name Francis Ponge, the question of the name might be said to have become one of the sites through which Derrida pursues his critical phenomenology.²²⁹ As Samuel Weber has suggested, for Derrida, the name - or indeed any word or phrase - is an instance of a "monadic totality" which depends for its totalisation on a certain transference taking place within its borders.²³⁰ These transfers can be said to concern the singular and localised conditions under which such generalising practices as "giving" a name are pursued. We have already seen this process at work in the way that a Derridean reading would deconstruct the phrase "nothing is repressed." Rather than a simple totality, a monad, our Derridean reading showed that any generalised understanding of the phrase depended upon the transference of a singular meaning within its borders away from

either its active or passive determination. In other words, this transference takes place because the phrase always already opens onto other interpretations which, although the same, are still not identical. Thus, as we showed there is no single text to which a phrase like "nothing is repressed" simply refers but instead an intertext, one which is revealed in the interpretive equivocation which takes place in the space between its sending and its possible reception.

A name, word, or phrase is thus totalised through an "intraverbal transference" of the singular to the general or universal which closes out its intertextual border, something which then points us towards the question of authority and especially the act of representation through which the authority of the name is made legitimate. The suggestion here is that if authority is only established through an intraverbal transference of the singular to the universal within the intertextual borders of the name, then the exercise of authority which is assumed in the act of representing the name is in fact inseparable from the act which constitutes the name *as such*. It is in this respect, therefore, that I have suggested that violence is internal to power when power is seen as acting together, since in acting together it is the "together" - the name of those who act - which must also be represented. What Arendt therefore fails to see in her view of power is that the together always emerges from *within* the moment of acting through a violent repudiation which it then represses. In this respect, acting together produces the "together" through an intraverbal transference within the "together" in such a way that it retroactively authorises the acting together which has just taken place. Consequently, acting together involves what Derrida has described as the deployment of a logic of presupposition,²³¹ or the constitutive violence of the performative act.²³² It is also addressed more specifically in his commentary on the nature of the gift as this also relates to the question of the name.²³³ More broadly, as his earlier work has suggested, it also refers to what he calls the violence of metaphysics.

As an attempt to state the political implications of the relationship between the name and Derrida's notion of violence as force, we might be tempted to say that Derrida alerts us to the violence which occurs in the giving of a name when the use of metaphysical presuppositions in fact performatively constitute the subject to which they seem only to refer. In other words, when the together which acts is totalised as a name through a transference of the singular to the general within its borders - borders which are always open, intertextually, to other names - there is always a certain constitutive violence which takes place beyond the simple description in which the together gives itself a name. Another critically useful term to describe this act of violence is "appropriation," since in representing the general through the singular this transference appropriates those other identifications which circulate within the borders of the name. It is the appropriative effect of the representational act which therefore means that a name is never just given and acting together is never just, well, acting together. Rather, as with the words and phrases which we have seen depend upon a certain repudiation which makes possible their representation, something - some other possibility for Being - is also repressed as well. The consequence of this is that the names which represent beings in their Being are never legitimate in and of themselves. Instead, as we see here they involve a certain intraverbal violence: "the force of giving a name" which is "the forcing of a name" on that which always already exceeds the borders of the name itself. Thus, force for Derrida might be said to refer to "constitutive violence."

In his reading of the US Declaration of Independence, Derrida relates the issue of the violence involved in acting together to the law by exploring the "together" who legitimates legal authority as a problem of signing - where signing the document of Declaration is more than just acting together. Instead, as an intraverbal transference signing the Declaration is also a performative act. The violence of the act of signing is therefore to be found in the fact that the signers do not simply sign for those who are absent but for those who do not yet exist. As Derrida suggests, "The "we" of the

declaration speaks "in the name of the people." But this people does not yet exist. They do *not* exist as an entity, it does *not* yet exist, *before* this declaration, not *as such*. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature."²³⁴ As Derrida has noted, it is because there is nothing for the signers to hold onto other than the grammar of their self-expression, that the declaration that "We hold these truths to be self-evident" involves an intraverbal transference of the singular to the universal so that the "We" who sign appear to transcend the paradox in which they find themselves. What is violent in this move is therefore the way in which it obscures the border between the people as a descriptive reference to a given subject and "the people" as a performative force which enacts its subject out of nowhere. As Derrida points out, "The signature invents the signer. This signer can only authorise him or herself to sign once he or she has come to an end...in a sort of fabulous retroactivity."²³⁵

In his more recent work on the law, Derrida describes the effect of signing as a *coup de force*, an interpretive violence which, because it institutes its own foundation, defies the traditional metaphysical parameters of justice and injustice.²³⁶ The key point here is that because there is no subject which exists before it as an authorising referent, the institution of the law involves an act of force because it itself constitutes the identity of that subject which then allows questions of justice and injustice to be posed. As Derrida puts this, "Since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a *violence without ground*. Which is not to say that they are in themselves unjust, in the sense of "illegal." They are neither legal nor illegal in their founding moment. They exceed the opposition between founded and unfounded, or between any foundationalism and anti-foundationalism."²³⁷

If the founding of the law involves the same violent transfer of subjectivity as the signing of the Declaration of Independence, then this also tells us something important about the nature of juridical interpretation as it applies to the many clauses of the US

Constitution. Rather than citing an original authority, adjudications such as those offered by the Supreme Court highlight an on-going process of refounding through which the absence of that origin is deferred. In other words, instead of existing before its moment of interpretation, the legitimacy of which the interpretation would then serve to reinforce, the authority of Constitutional law only appears in the weave of precedents which constitutes the judicial historicity of any statutory provision. In Derrida's terms, the judiciary are in fact in the same position as the signers of the Declaration insofar as the identification of an exemplary case constitutes the authority of the law in the same fabulous retroactivity as the intraverbal transference found in the statement "We hold." Moreover, they are also in the same position as the sons at the primal scene, who can only represent their father as the foundation for the moral law by presupposing that he is always already dead. As this suggests, since the foundations of the law are already a creative interpretation, that act of foundation will be carried forward into all future acts of interpretation.

As Judith Butler has remarked, "The judge is thus installed in the midst of a signifying chain," so that his or her performance in adjudicating the law also becomes a form of writing. As Butler notes, this adjudication "works only by reworking a set of already operative conventions. And these conventions are grounded in no other legitimating authority than the echo-chain of their own reinvocation."²³⁸ It is therefore the norms of precedent which are coded and then recoded within the practice of judicial review which (re)produce the effects of a subject called "the people" who are represented in a document called the Constitution. To paraphrase Baudrillard, what we have in the Supreme Court's decision making, and indeed in any office which has the authority to interpret the law, are signs of the law which substitute for the law itself. They do not represent the law, rather they substitute for its essential non-existence. As Butler adds, "The pointing to a ground which is never recovered becomes authority's groundless ground."²³⁹

In his recent work, Derrida himself has suggested that, "there is no more pure foundation or pure position of law, and so a pure founding violence, than there is a purely conservative violence. Position is already iterability, a call for self-conserving repetition. Conservation in its turn refounds, so that it can conserve what it claims to found. Thus there can be no rigorous opposition between positioning [or founding] and conserving, only what I will call (and what Benjamin does not name) a *differential contamination* between the two, with all the paradoxes that this may lead to."²⁴⁰

It is therefore because of this need to constantly refer back to something which is not there, which would be the pure idea of the law itself, that force persists within the act of legal interpretation as the condition of its possible authority. In this respect, the subject referred to in the phrase "the people" is in fact a text which is always open to the possibility of contestation. Consequently, any attempt to interpret, augment, or review a founding law in fact refounds it because it alters the singularity upon which the identity of its political subject is generalised. In other words, the identity of the subject who founds the authority of the law is inseparable from the performative force involved in making earlier cases into the precedents which serve as the exemplary examples of the law - something which happens in the moment of judicial decision itself when legal citations retroactively constitute these earlier cases into their exemplary status.

It is in this context that Drucilla Cornell has suggested that "The process of categorisation in the attempt to put together "like" cases, is always imperfect, itself an act of interpretation. There is no such thing as pure perpetuation of the law."²⁴¹ Referring this non-perfectibility to Derrida's understanding of iteration, she continues, arguing that "It is precisely the iterability of language that makes consistency as exact replication impossible, and therefore, change and innovation inevitable. Jacques Derrida has brilliantly shown us how the iterability of language implies both sameness and difference....Derrida shows that it is the very contextual character of language that allows for both understanding and communication and for misunderstanding and the

development of new meanings....[So that just] as a language functions to repeat the same message by different subjects, it retains the capacity to be turned away by a reader or a bearer from what it meant to its issuer so that it continues to mean something, but not identically what it meant to its writer or utterer."²⁴² Cornell's point here is not that the interpretation of legal texts cannot become institutionalised. Rather, it is to show that the site of that institutionalisation is in fact always put in question by each new interpretation, so that the issue raised by legal interpretation is precisely that the law must be instituted. In other words, it is because of this need to constantly innovate and reinvent the people as the grounds of legal authority that the limits of the law are as open-ended as the limits of language itself.

We can get a sense of this if we briefly review Derrida's commentary on Maurice Blanchot's essay "The Madness of the Day."²⁴³ Here the role of the political subject is played by a patient, Blanchot perhaps as an intellectual who finds the question of his own subjectivity problematic, and the law is figured in the two doctors who attend him and who demand to know the facts of his illness. It is because Blanchot cannot represent himself in the properly abstract way by recounting the precise facts of his case, and therefore represent himself as "the subject" of the legal-medical discourse, that the foundations of legal authority are called into question. It is therefore Blanchot's singularity which subverts both the law's relationship to its subject and the subject's relationship to the law. Neither are fully present before each other. Instead, as Blanchot's essay shows it is the singularity gestured at in the word "self" which must be effaced if there is to be a subject before the law.

Thus, taking on the role of Blanchot the patient, Derrida poses the question of the doctors' authority to interrogate him, to ask him for the facts about his illness, which is therefore also the question of the foundation of the law's authority. As he puts it,

Now herein lies the essential paradox: from where and from whom do they derive this power, this right-to-sight that permits them to have "me" at their disposal? Well, from "me," rather from the subject who is subjected to them. It is the "I"-less "I" of the narrative voice, the "I" stripped of itself, the one that does not take place, it is he who brings them to light, who engenders these lawmen in giving them insight into what regards them and what should not regard them.²⁴⁴

In other words, it is only when the "I" is abstracted from the self - from the "itself," which is the "I"'s localised and singular relation to the self; perhaps the self which is found in that play of differance which always already exceeds the field of authorised identifications - and becomes a subject (the "I"-less "I") that the law gains the "before" through which its authority is made present.²⁴⁵ We see the importance of this when Blanchot is unable to recall the facts proper to his illness. Here the reaction of the law is one of alarm, since without this its authority is called into question. As Derrida confirms, "That the "I" here does not always accompany itself is not born lightly by the lawmen; in fact, he alarms thus the lawmen, he radically persecutes them, and, in this manner, he conceals from them without altercation the truth they demand and without which they are nothing."²⁴⁶

This helps to explain why Derrida's later essay on the law refers to the "mystical" foundations of legal authority, to the fact that this authority involves a coup de force, and to the way in which the relationship between founding and conserving violence is operative within his own idea of iteration. It is because the law does not refer back to a centre but only to an intertextual weaving together of cases into precedents that its foundations are essentially mystical; also it is because there are always cases which offer alternative precedents that the authority of the law is established through a coup de force; and it is because subsequent judicial decisions are never bound by existing precedents that they always have the possibility of refounding the law and why the law is therefore iterative. Derrida therefore argues that the belief that the law reconciles right and justice

is undermined by the need which the law has to constantly refer back and deploy an act of force. And as he notes, "Everything would still be simple if this distinction between justice and droit were a true distinction, an opposition whose functioning was logically regulated and permitted mastery. But it turns out that droit claims to exercise itself in the name of a law that must be "enforced."²⁴⁷ It is this elemental connection to violence which in fact suspends any decision as to whether the law is ever just or unjust, and why Derrida argues that the fact that the law is therefore deconstructible may in fact be a stroke of luck for politics and indeed for all historical progress.²⁴⁸ In fact, it is the way in which each case before the law, by evoking the principle of preceding cases, brings the law back to its own potentiality-for-Being which enables this deconstructive move.²⁴⁹

The problem here is that if the law is to be legitimate justice must be both universal and singular at the same time. As Cornell points out in her analysis, rather than an ideal which can found the law, for Derrida this makes justice an aporia.²⁵⁰ It is because justice is only representable in the singular cases which are before a court that Cornell is able to argue that any attempt to define exactly what justice is in fact shuts off the possibility of justice at the very moment that it heeds its call. It is therefore because of this intraverbal transference which takes place in the moment of judicial decision that she follows Derrida's argument that "for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation...in each case, rejustify it, at least reinvent it in the reaffirmation and the new confirmation of its principle." In this respect, she argues that "the responsibility of the judge [is] not only to state the law but to *judge* it."²⁵¹

Therefore, we could say that when it combines justice with responsibility legal interpretation does not translate the authority of a founding revolution through the conserving acts which mark a determinate history, but that instead the law experiences historicity because the representation of this authority is marked in the refounding revolutions which take place in judicial decisions. As Derrida has remarked, "founding

violence is constantly represented in a conservative violence that always repeats the tradition of its origin and that ultimately keeps nothing but a foundation destined from the start to be repeated, conserved and reinstated. Benjamin says that founding violence is "represented" in conservative violence."²⁵² It is therefore this historicity in which justice both exceeds the law and serves as the horizon towards which its justification advances, the *aporia* which for Derrida marks its iterability, which makes justice and violence inseparable; something which we have already witnessed in our critical interpretation of the murder of the primal father. As Cornell suggests, the "rotteness" of any legal system is to be found in the erasure of this tension, which it does by referring to such tropes as "the plain meaning of words" or the "original intention" of the founders, so that the system can dress itself up *as* justice.²⁵³ She therefore maintains that it is because interpretation is inseparable from transformation, both creating it and directing its course,²⁵⁴ that those involved in interpreting the law have an inescapable responsibility for violence.²⁵⁵ In this sense, therefore, if a legal system is to be responsible to the overdetermination at work in the very notion of law, it has to recognise that revolutionary violence persists into the act of ordinary lawmaking itself. Once again, we can illustrate the political significance of this understanding of violence by comparing it to Hannah Arendt's political theory and to the account of revolution that she offers there.

The important point to note here is that Arendt's account of revolution needs to be understood in terms of her attitude to violence, which, as we have seen, by contrasting it with the power which comes from acting together, she attempts to define as non-political. It is therefore with respect to the possibility of excluding violence from the realm of political action, and thus making possible the conditions for what Arendt regards as freedom, that her understanding of revolution becomes intelligible. We can find the basis for this view both in her analysis of the American and French Revolutions and in her more abstract historiography where she charts the evolution of three types of human activity: action, work, and labour. It is the relationship of violence to politics in these

historical narratives which provide the backdrop to her further distinction between the public and private realms and her critique of the rise of society, for it is the historical appearance of society at the time of the French Revolution which Arendt sees as marking the entry of violence into the public sphere. As we shall see below, it is here that the issue of the social question assumes both historical and structural significance for Arendt.

As I have just stated, Arendt's political theory is set partly within a historical narrative from which it derives its justification. Here Arendt focuses on the historical destiny of three types of human activity as they affect the configuration of the political realm or public sphere. These are labour, work, and action.²⁵⁶ In her later texts she relates this interpretive history to the experience of the French and American Revolutions and uses it to account for the respective failure and success of both.²⁵⁷ As human activity, Arendt argues that modern history has seen a crucial and detrimental shift away from forms of political activity dominated by action and towards those dominated by the concerns of labour. She identifies political activity dominated by action, and especially acting together, as consistent with a properly functioning political realm and thus with the basic separation of the public and private spheres. In contrast, she sees that form of activity dominated by labour as bringing about the transference of those material concerns which once existed only in the private sphere into the public. At this point the political realm loses its focus on simply acting together, which Arendt defines as the condition of political freedom, and instead becomes dominated by the instrumental question of reproducing the basic material necessities of life.²⁵⁸

Historically, this transference takes place when the French Revolution appears out of and then attempts to address what Arendt calls the social question, specifically poverty. From this point onwards she indicates that the boundary between the public and the private realms collapsed insofar as the concerns of acting together gave way to those of labour. Rather than a distinction between the public and private or the political and the social, Arendt suggests that all we have now is "society," a space in which the concern

for simply acting together politically is replaced by the concerns of labour, the achievement of an easier life. In a nutshell, with the shift to labour arising out of the French Revolution Arendt argues that the idea of political equality comes to be replaced by social equality. Instead of political subjects and social subjects, Arendt implies that all that is left now are the masses, a situation which comes about when individuals have an a priori right to equality. It is this universalisation which draws equality down from the political to the social.

The crucial point here for Arendt is that the violence which was once confined to the private sphere and the social, and which served as the means of reproducing the basic conditions for existing and acting politically, has now been brought into the public realm. The tension here, of course, was that in order for those located politically in the private sphere to join the public sphere the meaning of equality first had to be extended from political equality to social equality. In this respect, violence entered the public sphere because part of the role of acting politically was now to ensure that the basic material necessities of life which make acting together possible were guaranteed. In other words, the possibility of freedom as simply acting together politically had depended upon the displacement of violence to the private sphere, something which with the universalisation of equality and its consequent extension from the political to the social could no longer be contained.

In her later work, Arendt compares the way in which the social question affected the history of both the American and French Revolutions. In the case of the French Revolution, Arendt argues that the need to resolve the social question was responsible for the Terror and ultimately the failure of the Revolution itself. As she notes, since the will of society can never be represented in any single political act, the Revolution could never make the step from attempting to constitute a sovereign authority to founding a Constitution. In contrast, it was the presence of social equality among the early settlers in the New World which maintained the sovereignty of the public sphere and thus enabled

the transfer from one type of representative government to another.²⁵⁹ It was, therefore, this prior resolution of the social question which allowed the source of the law to be separated from the scene of its enactment. In France, without this separation of powers the attempt to represent the will of "the nation" became the sole focus of political action. It was this instability between legislative and executive identity which made the step to representative government impossible. Once again, it was the issue of the social question, with its demand for a non-political origin for equality, which led to the necessity of deriving both the law and its authority from the same source. And it was because of this that the French Revolution was destined to repeat the violence of its founding moment.

The important point here is that Arendt links the appearance of the social question and with it the failure of the French Revolution to a loss of critical distance, that distance from one's own material interests which is necessary for a politics guided by action. It is such a loss which then opens the way for violence to dominate the public sphere, for when political goals come to be predetermined by a priori principles of social equality such as those found in the French Revolution's Declaration of the Rights of Man, political activity ceases to be about acting together and instead becomes merely an instrumental question. The political then becomes penetrated by violence since the task of acting together is reduced to a question of simply relating means to a pre-given end, one which in Arendt's terms is essentially non-political and therefore against her idea of freedom. For Arendt, therefore, critical distance is to be found only with the separation of the public and private spheres, where social equality creates the conditions for political equality rather defining the parameters of equality itself.

However, what is perhaps more important and more interesting than Arendt's diagnosis of the human condition is her response. This requires us to explore the place which the idea of revolution has in her work and her view of ordinary lawmaking as the augmentation of a founding law. Here Arendt is caught between the desire to establish a founding law as the point of reference for a common world which allows us to appear

together, and the need to hold all those foundations in suspension if her principle of acting together is to be the basis of politics. The problem here is that if the possibility of revolution is foreclosed by the constitutional structures which are intended to ensure this possibility, then Arendt's subsequent recourse to the principle of augmentation, in which a founding document would be open to amendment and reinterpretation, fails to address this paradox, one which is created by her desire to separate politics from violence. The point here, as we shall see, is that Arendt's understanding of augmentation suggests that amendments and reinterpretations simply improve upon an already existing foundation. However, if Arendt really does want to acknowledge the need for both foundations and revolutionary transformations, then she has no alternative other than to accept that rather than simply reinterpreting or amending a founding document all acts of augmentation will in fact violently refound the foundation of that document itself.

Ideally for Arendt, revolutions should allow the space of acting together to be recovered from within the homogenising milieu of societies structured by labour's interest in social equality. For as an example of acting together, revolutions have the possibility of beginning something totally new. The point here is that in her theory of politics-as-action Arendt sees political freedom as contingent and transient, limited in fact to the moment when acting together occurs. In other words, it is only insofar as individuals can appear together and begin a political community anew that they can be free. As a result, revolution and freedom, linked together by the possibility of acting together, are key elements in Arendt's thought.²⁶⁰ Thus, the bind which Arendt encounters is between her view of political freedom as acting together and the need to provide a permanent structure within which this can take place; that is to say, the way in which labour organises the modern political world raises the problem of the need to secure that which depends on there being no foundations. In her account of the US Constitution, Arendt describes this in terms of the concerns expressed by Thomas Jefferson insofar as the Constitution appeared to fail to ensure the one thing that brought about its own

possibility: revolution. That is, in securing the ends of the revolution the Constitution failed to preserve the means.²⁶¹

The difficulty here is that the possibility that a revolution might inaugurate a new beginning is foreclosed by the very structures which make it possible. Derrida illustrates this through his aporetic reading of the giving of a gift. As he points out in his reading of Baudelaire's essay "Counterfeit Money," the gift may constitute a new beginning yet it may not. In this essay, two wealthy friends leave a cigar shop. As they step out onto the street they encounter a blind beggar. One of the friends gives the beggar a coin of high value. However, as the friends move off along the street and the companion complements his friend on his act of generosity, we find out that the friend had in fact given the beggar a counterfeit coin in order to save money. As Derrida notes, Baudelaire's point here is that THE friend deserves our admonishment not because he acted selfishly, but rather because he failed realise that the counterfeit coin might not be discovered, thus allowing the beggar to have a new beginning. In other words, the point here is that an event might produce a revolution or it might not, and this is something which can only be decided at the moment when the beggar attempts to pass on the money. What is certain though, is that this possibility was foreclosed by the assumptions under which the friend originally gave the counterfeit money to the beggar.

Another way of expressing this point appears in the same essay. For as Derrida also points out, it is the context of expectation which surrounds the gift, in which the gift is constituted as such in and through the intention of the giver and the gratitude of the receiver, which means that the gift can never be what it is intended to be, that is, an absolute surprise and therefore a new beginning. Instead, the gift can only appear as a gift when we deconstruct the claim to self-presence which goes with the identities of the giver and the receiver. In this respect, where the intention to give and the gratitude of receiving are what constitute the gift as a gift, we would also argue that the giver and the receiver are themselves only the retroactive projection of the gift itself as it appears in the

act of giving and receiving. The point here is that Arendt only sees revolutions from this side of the paradox, from the side which sees a revolution as constituting those who act together: the pure performance of acting together in which, like the giver and the receiver of the gift, they no longer exist as subjects once they are no longer in the act of revolution. What Arendt therefore forgets is that the gift too does not originate outside of its context, which is what she is claiming in her understanding of revolution, but that it too only appears when the giver and the receiver are present before each other. Thus, what we need to be aware of and which Arendt cannot afford to acknowledge, is the undecidable location of the beginning - is it with the revolution itself or with those who revolt - and the fact that, as we have seen, the beginning only begins through a moment of constitutive violence.

In contrast, for Arendt it is the moment of acting together itself which can secure the possibility of beginning and therefore do so in a non-violent way. Hence, in her account of the American Revolution she focuses on what she believes is the pure performative force of "mutual promising."²⁶² In other words, in contrast to Derrida for whom the beginning, whether this is as gifts of money or political declarations, can only begin through an intraverbal transference of subjectivity from the non-identical to the self-same, in her account of "mutual promises" Arendt asserts the possibility that acting together can be a pure and unmediated act. Consequently, she wants to maintain that "It is in the very nature of beginning to carry with itself a measure of complete arbitrariness....[T]he beginning has, as it were, nothing to hold onto; it is thought to come from nowhere in space and time."²⁶³ The point here is that because the beginning in fact carries with it not a mutual promise but rather an intraverbal transference in which the "I" is reduced to the "We," Arendt, as we have seen, fails to acknowledge the violence which the act of beginning something new involves.

The problem with Arendt's position is that for promising to avoid this moment of violence, the founding law itself must be severely circumscribed, to the extent that it can

contain nothing more contentious than the possibility of promising itself. As George Kateb has noted, deciding whether to go to war and constitution making appear to be the only dimensions to her idea of political action.²⁶⁴ This is also the direction in which Arendt's response to the social question seems to point.²⁶⁵ For when all of the questions involving issues of social inclusion and exclusion are rendered non-political then the only political act left is to make and remake the terms of the founding contract. However, since this refers to nothing more than the possibility of making promises the public sphere is turned into a political vacuum. At this point Arendt achieves the thing that she probably wanted all along: non-violent revolution; the opportunity to fundamentally alter the basis of society without having to decide who is included and who is excluded.

Arendt senses the difficulty which surrounds the way in which she uses promising as a metaphor for understanding beginning in her frequent references to Rousseau in On Revolution. As she says, "Theoretically, Rousseau's problem closely resembles Sieyes vicious circle: those who get together to constitute a new government are themselves unconstitutional, that is, they have no authority to do what they set out to achieve."²⁶⁶ As Derrida's reading of the Declaration of Independence suggests, it is because of the finite singularity of those making them that the authority of either a political declaration or a written Constitution must rest upon something more than mutual promises. However, because she is committed to maintaining the public sphere as a realm where acting together politically is free from violence, Arendt responds to this by invoking the very distinction between the violence which founds a state and the interpretive acts which conserve it which we have been deconstructing here. For as she adds in her discussion of Rousseau, "The vicious circle is present not in ordinary lawmaking, but in laying down the fundamental law, the law of the land or constitution which, from then on, is supposed to incarnate the "higher law" from which all laws ultimately derive their authority."²⁶⁷

The force of this distinction appears when Arendt discusses the way in which the US Constitution allowed for later Constitutional amendments. She believed that the

possibility of such "augmentations" as she called them would preserve the principle of revolution which represented the spirit of the Constitution itself. Thus, with reference to her basic bind between freedom as acting together and the permanent structure which would preserve this possibility where the existing historical-political context (dominated by the concerns of labour) is unforthcoming, Arendt argued that the authority of the US Constitution in fact rested upon the principle of augmentation. In other words, the foundation was secured on the idea that it could be altered as became necessary.²⁶⁸

The idea of "alteration" present in Arendt's understanding of augmentation is important here because it meant that "all innovations remain[ed] tied back to the foundation which, at the same time, they augment and increase."²⁶⁹ As this suggests, despite her often intense valorisation of its revolutionary spirit, for Arendt augmentation can in the end never be more than a supplement to an original and founding law. There is the possibility of revising, adding too, and even reworking the clauses of the Constitution, yet because of the grammars within which Arendt works they presuppose the final authority of the very document which they will amend. Thus, Arendt's apparently provocative suggestion that "the 'revolutionary' act of beginning something entirely new, and conservative care, which will shield this new beginning through the centuries, are interconnected,"²⁷⁰ is somewhat disingenuous. For in Derrida's reading of Heidegger, to be truly caring "conservative care" must conserve the question of beginning as the intraverbal limit of its own possibility. As we have seen, in this case ordinary lawmaking must also be seen to carry the same violence as the founding law.²⁷¹

This is why, as we have seen Drucilla Cornell suggest, judges have a responsibility not merely to apply the law but to judge it as well. As we saw in the previous chapter, because they are not subject to a prior law the sons who murder their tyrannical father at the primal scene are responsible for an act of violence for which they cannot be held accountable. The same applies here to judges when they interpret a law whose pure idea cannot be represented. This is because neither is able to simply represent

the idea of Justice. Instead, they are already involved in its re-presentation. In the case of the sons, this takes place when they presuppose that the father is always already dead, always already there to explain those feelings of guilt for which there is no prior basis, while in the case of judicial interpretation this takes place when it is assumed that the particular subject around which a precedent is framed is able to translate the idea of Justice to all other cases regardless of their idiomatic variations.

In other words, the contribution which our earlier reading of the primal scene makes to Cornell's account of judicial ethics is that judges are responsible for judging the law because the subject through which they re-present the idea of Justice marks an act of violence for which they cannot be held responsible. As we have seen, it is because it cannot be represented that the idea of Justice must always exceed the subject through which it is re-presented, and it is therefore this responsibility for representing the unrepresentable which ultimately saves judicial interpretation from itself, that is, from a violence for which it otherwise cannot be held accountable. The kind of responsibility which Cornell therefore has in mind is one where judges respond to the unrepresentability of the idea of Justice and therefore, as Derrida urges, to the singularity of every case.

In Arendt's terms, this means that judges have a responsibility to always recover the social question, since this marks the point where the subject of discrimination is represented as the limit to the political. The point here is that by identifying the subject of discrimination judges decide the social question by defining the limits to the political. When judges carry out their responsibility to judge the law, they therefore create a space where the social question recovers the idea of Justice as an issue for that subject in whose name the limits to the political are currently defined. It is therefore because judicial interpretation is always involved in redefining the boundary between the political and the social, deciding whether the subject of Justice is merely a political or instead a social subject, that we can imagine that Arendt's response to the social question - to transfer it

to a committee of experts - is one which would efface this critical dimension of judicial interpretation. Instead of redefining the limits of discrimination, for Arendt, judicial interpretation would simply conserve the boundary between the political and the social which has already been inscribed in the founding law, just as her understanding of augmentation suggests. Ultimately, then, Arendt is distrustful of a responsible judiciary since in responding to the social question as a call to represent the idea of Justice they would reintroduce the danger of violence to the political realm, the danger which her political theory was intended to remove.

However, what Arendt fails to consider here is that the account of the political which she has in mind, one where freedom is always possible because of the opportunity for revolutionary change, depends upon the very connection between violence and judicial interpretation which she rejects. In this respect, it is the possibilities opened up by a critical reading of both the French and American Revolutions that a Derridean response to Arendt would want to maintain. That is to say, from the French Revolution and Robespierre we can acknowledge that in a democratic political system it is never possible to finally bring a revolution which is conducted in the name of Justice as equality to an end; that if the system is to be open to the idea of Justice then laws made in the name of the existing structure of opportunity will be obsolete at the very moment that they are issued.²⁷² However, because the idea of Justice cannot be represented these laws will not be swept away by a higher law but rather by the violence internal to them. Thus, from the American Revolution we can acknowledge that because all laws require an intraverbal violence to set them in motion, the transfer of the "I" to the "We," all future interpretations will repeat this motion towards violence. There is, then, no final possibility of eradicating violence from the constitution of the public sphere, since this may be the only thing which preserves it as a possibility for those who are at any one time excluded from it. In this respect, the revolutionary spirit of which Arendt speaks is preserved by the elemental connection between violence and the political, the very

position which she sets out to reject. That is to say, it is the way in which the public sphere can only be constituted in the re-presentation of the idea of Justice which allows the right of revolutionary change and the question of new beginnings to always be raised anew.²⁷³

CHAPTER SIX

THE DANGEROUS PROTECTOR: MULTIRACIAL AMERICANS AND THE EQUAL PROTECTION CLAUSE

We can also explore the relationship between the subject and the law, and in particular the repetition of founding violence in judicial interpretation which results when we stop representing the law as a field of objectivity for a subject, by taking the issues posed by the problem of representing the subject who is supposed to legitimate the interpretation of US Constitutional law. As we shall see, this starts to open up the important relationship which the law has to the principle of equality. For where an otherwise empty phrase like "equality before the law" stands as a signifier for "the people," the narrative of political identity through which equality is represented in Supreme Court adjudications becomes an example of how this political subject is made-present before the law. Rather than an unambiguous universal, it is therefore the essentially contested character of equality which opens the foundations of the law up to refounding within the context of what otherwise appears to be simply interpretation.

In the case of the US Constitution, this means that we need to explore critical assessments of the equal protection clause and cases where it has been applied. Here the tension which becomes manifest in such areas as congressional redistricting between the principle of colour-blind constitutionalism and the affirmative use of racial discrimination suggests that "the people" can only be made present as the foundation for legal authority in those singular cases where the right to equal protection is interpreted and applied. In this respect, the example of recent redistricting cases such as Shaw and Miller where this tension is in play offer a way of drawing our attention to the relationship between the principle of equality, the use of racial identity in legal discourse,

and the construction of political representation. In other words, given the tension between colour-blind constitutionalism and affirmative action, the use of the equal protection clause carries a performative force which directly determines the racial identity of the political subject, who is therefore not simply represented as the source of sovereign authority but who is instead re-represented as a subject before the law (on such sites as congressional districts) as either just white or just black.

The importance of taking this critical approach to the equal protection clause has been illustrated recently by the question of recognising multiracial identity, and in particular by the question of whether the next US census should carry a box which would allow individuals of mixed-race to self-identify. As the demand to recognise multiracial identity on the census suggests, as it is currently constituted the equal protection clause is organised around a monoracial logic which imposes an intraverbal violence on multiracial individuals by prohibiting them from self-identifying. In this respect, it is not only the census but also other areas of political representation like congressional districting with its polarisation between white majority and black majority districts which multiracial individuals argue is discriminatory. One example of this is provided by a case filed in a Florida federal court by an interracial family where the mother, Loretta Edwards, argued that the categories of the census constituted racial discrimination by forcing her two multiracial children to repudiate the racial identity of one of their parents. Beyond this, multiracial organisations such as the Association of Multiethnic Americans (AMEA) have lobbied both Congress and the Office of Management and Budget (OMB), arguing that the only way that multiracial Americans can be given equal protection is by first establishing a multiracial category on the census, a move which would allow the type of information to be gathered which would permit discrimination against this group to be tracked.

One of the implications of a multiracial census category would therefore be that it would reconstruct the terrain upon which decisions about issues such as congressional

redistricting and other affirmative action areas are made. This in turn has embroiled multiracial Americans in a debate with the black civil rights movement. Here the key focus of attention is brought into play: the one-drop rule of hypodescent which has been used to construct racial identity in American equal protection jurisprudence since the Fourteenth Amendment was introduced. The point here is that the one-drop rule has been responsible for many multiracial Americans being historically classified as black, and while it clearly effaces the particularity of these individuals it has also been the basis upon which they gained equal protection during the civil rights era. Moreover, it has also provided American culture with its monological understanding of race. It is for this reason that it structures both the Supreme Court's understanding of race in its adjudication of cases of racial discrimination and the government's understanding of race when it composes the racial categories to be used on the census.²⁷⁴ And it is for both of these reasons that it is central to the concerns of the black civil rights movement today when the Court's shift towards colour-blind constitutionalism is already cutting into the scope of affirmative action. It is because of this that a multiracial census category is problematic for them, since this would be likely to lead to further reductions in the number of people of colour identifying as black.

This, however, is an issue which I take up later in the case study. For now I am interested mainly in how the equal protection clause operates from the point of view of judicial interpretation and the implications which follow from this for the identity of the political subject. In this respect, I look to situate the experience of multiracial Americans in the context of other minority groups such as Latinos, Asian Americans, and gay men and lesbians. Although their experience of the equal protection clause differs, what they share in common is the way in which they constitute the outer limits of identification against and through which the current understanding of discrimination is applied. However, in order to appreciate this we first need to examine the limitations of the equal

protection clause itself, and the effects which follow from it for black/white racial politics.

Joseph Tussman and Jacobus tenBrock have linked the basis for the equal protection clause to the Declaration of Independence. As they note, "The doctrine of equal protection is, of course, embodied in the Declaration of Independence."²⁷⁵ It then became part of the Constitution when it was incorporated into the language of the Fourteenth Amendment, largely as the result of the abolition movement in the post-Civil War era. As the authors note, "the equal protection clause was designed to impose upon the states a positive duty to supply protection to all persons in the enjoyment of their natural and inalienable rights - especially life, liberty, and property - and to do so equally."²⁷⁶ As they point out, this was more than just a demand for administrative fairness. Instead, they suggest that "early in its career, the equal protection clause received a formulation which strongly suggested that it was to be more than a demand for fair and equal enforcement of laws; it was also to express the demand that the law itself be "equal."²⁷⁷ Thus, beyond the quality of its application, the law should be constructed to apply to all persons equally. In other words, it was no longer legitimate to construct unequal laws so long as they were applied fairly. Thus, the use of the equal protection clause has moved along two lines: as a limit on permissible legislative classifications, and as a principle through which to oppose discriminatory legislation.

It is here, however, that Tussman and tenBrock identify the elemental paradox or aporia upon which the equal protection clause is impaled. As they put this, "Here, then, is a paradox: The equal protection of the laws is a "pledge of the protection of equal laws." But laws may classify. And the very idea of classification is that of inequality."²⁷⁸ In other words, in order to protect all persons equally the equal protection clause must ensure that all laws be inclusive. However, it is in the very nature of laws that they allocate benefits or burdens which do not apply to all persons. For if all persons were "truly" equal there would be no need for laws. Equality therefore points towards

classification and, paradoxically, to inequality. Thus, the idea of equal protection is undermined by the very assumptions which set it in motion.

The issue which we face is that the idea of equality in the phrase "equal protection of the laws" lacks a substantive centre, which is to say that it is unable to specify a notion of justice which can inform all legislative acts. Because of this, justice becomes localised as the equal protection clause gains its centre by responding to particular cases in which a demand for protection is made. As a result of this, the idea that all laws can protect all persons equally is inherently ambiguous. As Owen Fiss has argued, "The Clause contains the word "equal" and thereby gives constitutional status to the ideal of equality, but that ideal is capable of a wide range of meanings."²⁷⁹ The result of this is that its application will carry a performative force which is likely to reproduce the very inequality which it was intended to ensure against.

The point here is that ignoring the lack of a centre to the equal protection clause works to foreclose any more penetrating analysis of the legal subject that is made-equal. That is to say, it is because it involves an intraverbal transference from the singular case to the idea of justice that the equal protection clause becomes a "dangerous protector" for all those identities which would seek inclusion within its scope of reference, since they must inevitably repudiate some deviant aspect of their identifications in order to fit themselves into this singular universal upon which discriminatory treatment is adjudicated. In this sense the equal protection clause is a scene of violence because the principle which mediates the ideal of equality is always singular. In other words, there is no universal principle which can translate the idea of justice to each plaintiff's claim without taking another singular example as its point of reference. This is the problem posed by the use of precedents and other mediating principles when we take seriously Derrida's suggestion that we stop representing the law as a field of objectivity for a subject.

As Fiss and other commentators such as Michel Rosenfeld have noted, the mediating principle for the equal protection clause has always been anti-discrimination.²⁸⁰ However, since anti-discrimination then becomes just another term for equality what we instead find is that different examples of discrimination across different social contexts are then relied upon to give the principle of anti-discrimination its concrete content. Thus, we find that instead of anti-discrimination US Constitutional law has invoked concepts of racial, sexual, and other forms of discrimination. The problem here of course is that the representation of racial identity itself involves the same intraverbal transference as the use of any judicial precedent. That is to say, as an attempt to represent discrimination in itself it relies upon a singular experience of discrimination suffered by one racial identity, which of course in the US has been black identity, as its point of reference. The problem, then, is that although blacks have indeed suffered prolonged and widescale discrimination, the law creates a situation where other racial and ethnic minorities must now take black racial identity as the standard by which to measure and judge their own discrimination. Within this, as we shall see, ethnic minorities have found that they have in fact been forced to take the narrow criteria of race itself rather than the much broader concept of ethnicity when interpreting their experience of discrimination. Of course, it has been due to the one drop rule that multiracial individuals have been unable to define their experience of discrimination outside of discrimination towards blacks. However, as we shall see, racial discrimination is a charge which many multiracial advocates are now leveling against the black civil rights movement.

The important point here though is that the question of translating the equal protection clause through such mediating principles as racial identity highlights the way in which US Constitutional law relies upon a wide range of what critics have called "legal fictions" in order to provide such paradoxical statutes as the equal protection clause with their "mediating principles."²⁸¹ Thus, because it represents a fiction, the

attempt to operationalise the equal protection clause through the principle that black racial identity provides reasonable grounds for interpreting discrimination has a performative effect on the racial subjects which it merely seems to describe. That is to say, in order to achieve equal protection subordinated identities must first of all represent themselves through the criteria of racial discrimination which the law adopts. However, because these representations of racial identity are fictions they also constitute the "frictions" through which the equal protection clause is again opened up to contestation. Therefore, it is because they can never escape their singularity that an intraverbal violence is always already at work within any attempt to operationalise the existing provisions for anti-discrimination.

A very basic example of this is provided by the current debate over the application of the equal protection clause to congressional redistricting. As recent Supreme Court cases illustrate, it is because there is no substantive content to the equal protection clause that the judicial review of state districting procedures is one important site for determining the racial identity of the legal subject. That is to say, the racial identity of the individuals represented in congressional districts is essentially worked out in the process of giving a substantive content to the meaning of the equal protection clause. In this respect, reviewing the history of congressional redistricting suggests that the meaning of racial discrimination cannot be finitely determined by the experience of blacks. Instead, it suggests that the meaning of racial discrimination has been determined by shifts between the principle of colour-blind constitutionalism and the positive use of racial discrimination in Supreme Court interpretation.

This in turn means that the racial identity through which congressional districts are represented, the identity of the racial majority in each district, has moved between white and black. In other words, judicial interpretation of the equal protection clause is directly related to the racial identity of the American people; it determines who "America" is racially when it is "represented" in Congress. The point here, however, is

that regardless of what interpretation is given to the equal protection clause, the representation provided by congressional districts is essentially a legal fiction in which both the principle of colour-blind constitutionalism and affirmative action efface the friction between black and white identity by taking either one or the other as the mediating principle through which the individuals in these districts are aggregated together. In this respect, the same refounding violence which Derrida finds in the law is at work within the structure of the debate over districting - its either/or framework in which we believe that by choosing between colour-blindness and positive discrimination we have exhausted the field of critical possibility - at the point where the political subject is not merely represented in judicial terms but also actively made-present as a racial subject.

To make this argument slightly clearer, we need to review briefly the use of equal protection in the cases of *Shaw* and *Miller*,²⁸² and then situate them within the wider problems posed by attempting to provide equal representation within a liberal constitution. The key issue on which both of these cases turned was whether the positive use of racial discrimination in the process of congressional redistricting violated the equal protection clause. As such, the Supreme Court's decisions turned on whether or not so-called "bizarrely shaped" districts in fact represented the use of race as a predominant factor, rather than merely one of several factors which might be considered when drawing district boundaries. Thus, if the former was found to be the case then these districts would be found to be in violation of the equal protection clause. In the case of *Shaw* and then again in *Miller*, the Court found that race was a predominant consideration and so ordered the redrawing of boundaries along the lines of other criteria such as geographical compactness, spatial contiguity, and communities of political interest which were supposedly race-neutral. As this suggests, in its review of these cases the Court was applying a colour-blind interpretation to the equal protection clause, so that any district which by its shape appeared to privilege a single factor such as race

immediately triggered the Court's procedure of strict scrutiny and the demand that the state justify a compelling interest.²⁸³ That is to say, the attempt to achieve equal representation through the reverse use of racial discrimination was itself taken as a sign of discrimination.

What I believe Shaw and Miller show is how achieving equal protection of the law brings the identity of individuals within a system of discipline. The point here is that despite its claim to be "race-neutral" the colour-blind approach taken by the Court in Shaw and Miller meant that the districts concerned were represented through a white racial identity; for when the basic issue is the lack of voters of colour a colour-blind interpretation will always favour white racial identity. Within congressional districts this means that the racial identity of those represented can only be either white or black depending on whether a colour-blind or colour sensitive interpretation anti-discrimination has been upheld by the courts. As Lani Guinier has suggested in her critique of such territorially based representation, "Territorial districting imperfectly uses an aggregating rule that inevitably groups people by virtue of some set of externally observable characteristics such as geographical proximity or racial identity."²⁸⁴ The point here is that because majority-minority and colour-blind districting both repeat this process, the problems which Guinier finds in territorial districting in general mirror those found in the attempt to apply equal protection legislation to congressional districting. As Guinier suggests in her comments on territorial districting, it authorises a system of "virtual representation."

The key aspect of this is the way in which using the principle of one-person, one-vote turns elections into a situation where the winner-takes-all. For it is this which allows the voter's racial difference to be effaced within the racial identity of the elected majority. In this respect, both territorial districting and the shift between colour-blindness and colour sensitivity can be said to give rise to the same psychological condition, one which Joan Copjec has identified with political representation in general: the way in

which both Constitutional law and liberal theories of democracy create the political subject as essentially hysterical.²⁸⁵ As she argues, although in a liberal constitution representation is intended to bear witness to a subject's particularity and difference, the very act of communicating this difference is, ironically, the process through which it is also annulled. That is to say, the subject can only appreciate its difference when this is communicated to others. However, when others then represent this difference to themselves the subject is no longer particular but has at some level been reduced to a more general understanding. Hysteria therefore results because under a liberal constitution representation constitutes an aporia with respect to the possibility of difference.²⁸⁶

It is therefore because the right to be different is only secured when an individual allows his or her subjectivity to be represented by the majority in his or her congressional district that the political subject is hysterical. For like the liberal tradition, Constitutional law assumes that an individual is reducible to a more general identification.²⁸⁷ As Guinier has argued, "Geographic districting grounds the representational relationship in the opportunity to vote for a candidate to represent the interests of voters within a regionally defined political unit. It is assumed that those voters who share the homogeneous characteristics that give the district its "identity" (its dominant political, regional, or racial affiliation) are in fact represented."²⁸⁸ The point here is that hysteria arises because, to use Guinier's words, "the geographic unit is not necessarily politically homogeneous or of one mind who should represent it."²⁸⁹ It is therefore this representational excess in majoritarian democracy, centred upon the paranoia of the "wasted vote," which constitutes the political subject as hysterical. To reemphasise Copjec's point, the practice of democracy always leaves something unremarked.

As this suggests, regardless of whether it is due to the failings of territorially based districting or the tensions within the equal protection clause, congressional districts are really spaces in which individuals are "forced to pass"²⁹⁰ because of their

objectification in what Guinier calls "artificial groups." It is thus the effacement of otherness, the repudiation of that ambivalence which supports critical agency, which explains the hysterical nature of representation in a liberal society. As Guinier points out, "voters do not move into an election district; they move into a neighbourhood or community."²⁹¹ In other words, once there individuals find themselves "confined" within an already determined political identity. As we have noted, Guinier calls this type of representation "virtual representation."²⁹² We might add that it also constitutes a virtual political subject at the same time, for as she notes "the voter is deemed represented whether she votes for the losing candidate, is an unnecessary part of the winning candidate's victory margin, or fails to vote at all."²⁹³

However, it is not only blacks and whites who are forced to pass by the privileges and subordinations which result from the shifts in judicial interpretation of the equal protection clause. Instead, if we look beyond the white/black paradigm mapped out by the opposition between colour-blind constitutionalism and the attempt to use racial discrimination in a positive way, we can see that there are ethnic minority groups who are forced to pass regardless of whether the courts take a colour-blind or a colour sensitive approach to racial discrimination. As Deborah Ramirez has pointed out, "when the courts and the legislature first created race-conscious remedies in the 1960's, the United States was seen as a black and white society."²⁹⁴ In this respect, the civil rights laws were originally directed at African Americans as a response to their history of subordination by white America. At this time, blacks made up the 10% of the population who were not white. However, Ramirez argues that since the 1960's demographic changes towards an increasingly large coloured population that is also increasingly not black have led to a situation where the structure of affirmative action is having an exclusionary effect on non-black minorities.

As she illustrates, between 1980 and 1990 the Asian-American population grew by 107.8%, the Latino population by 53%, and the non-Latino African American

population by 13.2%. In contrast, the number of whites rose by only 6%. Already in New Mexico people of colour make up 50% of the population, and by 2000 this is also likely to be the case in California. Other states such as Texas, Florida, and New York are also moving in this direction. However, within these figures it is also the case that the coloured population is moving towards identities other than black.²⁹⁵ In 1960 blacks constituted 96% of the coloured population. In contrast, today they contribute only 50% with projections estimating that by 2010 Latinos will overtake them to be the largest minority. As Ramirez points out, this particular demographic trend is important because the affirmative action remedies created in the 1960's were designed to protect and empower only African Americans. Now, however, as these figures suggest it is apparent that these remedies are creating exclusions where at this earlier time only inclusion was thought to be taking place. In other words, although benefiting as people of colour from their aggregation within black identity, other minorities are also experiencing invisibility at the same time as the elements of their ethnicity which cannot be reduced to race are overlooked; and as these groups become larger the negative effects of their exclusion are becoming more manifest.

Usefully for our purposes here, Ramirez illustrates this with an example from congressional districting. She cites the case of *DeGrandy v. Wetherell*, where two separate groups of Latino and black plaintiffs alleged that the Florida Senate and House redistricting plan violated the Voting Rights Act by diluting the strength of blacks and Latinos in the Dade County area.²⁹⁶ Here the courts found that although each group was cohesive within itself, they were sufficiently different from each other that the creation of a Latino majority district would dilute black voting strength in the same way that a black majority district would dilute Latino voting strength. Thus, the Supreme Court in reviewing the case left the redistricting plan undisturbed and suggested that the questions of racial identity and allocation of entitlements raised here were a matter for the legislature and not the courts. As Ramirez points out, the Court's response to this

situation suggests that the Voting Rights Act only works by assuming that the same political agenda, and thus the same experience of identity, exists for all people of colour. Moreover, Ramirez notes that by essentially relinquishing judicial review of the case it seems as though jurisprudence will always favour the stronger minority, in effect forcing the weaker minority to pass.

Beyond this though, the problem is not just that ethnic minorities such as Latinos differ from blacks racially, it is more that their identity, by incorporating elements of their ethnicity, cannot simply be reduced to race as the court apparently assumed in *DeGrandy*. A more serious issue than the one raised in the *DeGrandy* case, then, is that the failure of the courts to fully distinguish race from ethnicity works to exclude this increasingly large non-black minority from equal protection. In other words, where the black/white structure of the districting debate works to exclude non-black minorities from equal protection because of their current numerical weakness, the court's assumption that the question of what counts as discrimination for an ethnic minority is covered by the concept of race creates the space for a more pervasive exclusion of these same minorities by failing to see that what constitutes discrimination for an ethnic group goes beyond what can simply be designated by race. As Juan F. Perea has suggested, whereas racial identity is usually related to skin colour and principle physical characteristics such as the shape of one's nose, eyes, or hair, ethnic identity includes a set of characteristics that may include at least "race, national origin, ancestry, language, religion, shared history, traditions, values, and symbols."²⁹⁷ In this context, non-black minorities find that they are again forced to pass, this time by tailoring their discrimination claims so that what is really part of their ethnicity is made to look like race.

As an example, Perea cites the case of *Hernandez v. New York* where the assumption by the court that race and ethnicity were interchangeable in cases dealing with racial and ethnic discrimination led to a failure to see that the use of a pre-emptory

challenge to exclude two bilingual Latino jurors from a jury was a violation of equal protection because a bilingual language ability was taken by the court to be race-neutral when in fact the issue at hand was whether the challenge was ethnicity-neutral, not race-neutral. In other words, the pre-emptory challenge was allowed because a question of ethnic discrimination was treated by the criteria of racial discrimination, which as we have seen is more limiting. As Perea argues, "By creating a "concept of race" that it can expand or contract at will, the Court dilutes the meaning and proper analysis of race and ethnicity under the Constitution. A pliable "concept of race" leads easily to non-recognition of discrimination based on ethnic characteristics whenever the Court decides that certain traits, such as bilingualism, language difference, or accent do not belong within the boundaries it defines for race."²⁹⁸ The point here, then, is that language is as elemental to Latino identity as race is to black identity. The problem arises, however, when this ethnic identity is looked upon by the courts in terms of race since it is then that such issues as language discrimination fall outside of the equal protection clause. As Perea argues, ethnic litigants are now faced with a situation where they must persuade a court that an ethnic characteristic is sufficiently linked to race to function as a "surrogate" for the criteria which the court will accept as the basis for racial discrimination.²⁹⁹

Under these circumstances, the right of ethnic minorities to bring claims for discrimination under the equal protection clause is left to judges, who, because there are no guidelines upon which to establish the threshold of correlation between race and ethnicity, will therefore manifest inconsistent rulings on such matters as whether language is covered by race or not. The general point, though, is that although ethnicity is recognised as a suspect classification under the Fourteenth Amendment, the interpretive approach to ethnicity taken by the courts means that in order to qualify for equal protection ethnic minorities currently have to pass as racial minorities, and will therefore be limited accordingly in the degree of protection which they can obtain for their ethnic identity from the courts. As Perea suggests, ethnic minorities are effectively in a position

where they must define their oppression by the terms set out by the two communities which have historically dominated the debate on discrimination in America, black and white; a debate which these minorities must therefore reproduce because of the way ethnicity is conflated with race in the mind of the courts. As he argues, "For too long, the real ethnic complexity of American society has been submerged, hidden by a discussion that counts only race as important and only black or white as race. What of the rest of us, neither black nor white, not fitting into either category?"³⁰⁰

In this respect, there is an analogy between ethnic minorities and multiracial people, that is, people whose racial identity is not confined to a single race but instead combines the racial identity of two racially distinct parents. Here we find that the same limitation which the courts reduction of discrimination to the terms of the black/white debate places on ethnic minorities is reproduced in the experience of multiracial Americans. As with ethnicity, there is always something in multiracial identity which stands in excess of the court's racial criteria and which cannot be included in the current scope which it gives to the equal protection clause. In the case of ethnic minorities, this may be, as we have seen, such things as language, ancestry, or religion. However, for multiracial people it is race itself, the inability to confine their racial identity to any one of the categories used in official or legal discourse. Nevertheless, in both cases it is the court's focus on the black/white racial paradigm which determines their chance of gaining protection from discrimination.

In the case of multiracial people, however, it is not the vagaries which come into play in judicial determinations of what constitutes race at its threshold with ethnicity which determines whether they have access to equal protection or not but rather the rule of hypodescent which governs the recognition of racial identity in America. According to this rule, having one-thirty-second or more of black ancestry means that they are forced to repudiate other parts of their racial ancestry and parentage and identify as black. Therefore, it is not that they have to follow ethnic minorities and pass as a racial identity

but rather that they have to pass as just one racial identity if they are to be covered by the equal protection clause. Because of this, multiracial advocacy groups have argued that it is only through enlarging the meaning of racial identity that multiracial individuals can be given equal treatment within US Constitutional law. Until then, like ethnic minorities the relationship between equal protection and racial identity has the effect of relegating them to the status of second-class citizens. As Bijan Gilanshah noted in 1993 when trying to assess the possible significance of the first national gathering of multiracial individuals in Bethesda, Maryland, we are now at a point where "Individuals identifying themselves as multiracial, and thereby existing in a state of flux, are demanding clarification of their nebulous social and legal status and seeking official recognition as a distinct, powerful social unit with idiosyncratic cultural and legal interests."³⁰¹

As we can readily see, the appearance of multiracial individuals as a recognisable political group has taken place within that same demographic shift which has led not only to more people of colour but also to more people of colour identifying as non-black. Although the numbers of people identifying as multiracial is less than for ethnic minorities such as Latinos or Asian Americans, the percentage increases are as or more dramatic, thus suggesting that we can expect this group to become rapidly more visible on the American cultural and political landscape. This increase has taken place largely over the last two decades and applies to both the number of interracial marriages and the number of multiracial children. For example, the number of interracial marriages has escalated from 310, 000 in 1970 to 1.5 million in 1990; and in 1993 in a poll for Time magazine, 72% of people knew married couples who were from different races.³⁰² As evidence that this trend will continue, another poll in 1991 also suggested that 74% of Americans felt that interracial marriage was acceptable for themselves or for others.³⁰³ Meanwhile, Richard Rodruigez has noted that 57% of American teenagers now date interracially.³⁰⁴ While interracial marriages between blacks and whites are still relatively rare (about 6% for men and 2% for women) the percentage of those marrying outside

their racial category is much higher for other minorities. For example, for Asians the figure is 12% for men and 25% for women, while for Native Americans the figures are 59% and 60% respectively.³⁰⁵

Nevertheless, sociological data suggests that numbers of black/white marriages is likely to increase in the future. Already the percentage of blacks marrying whites has risen from 1.7% in 1960 to 5.9% in 1990, and higher levels of post secondary education and its associated middle class economic status are expected to continue this trend. In 1993, 12.1% of all new marriages by blacks were interracial, up from 6.6% in 1980 and 2.6% in 1970.³⁰⁶ Moreover, the percentage of black women marrying outside of their race is climbing faster than for black men. On the one hand, black women are attending college in greater numbers than black men, while on the other hand 32% of black men between the ages of 20-29 are either in detention, or on parole or probation.³⁰⁷

However, consistent with Ramirez's figures on rising ethnic identity, due to the increasing levels of immigration to the US, it is with Asian and Hispanic peoples that the highest rates of interracial marriage will be found in the future. In the last thirty years immigration from Latin America, the Caribbean and Asia has added 18 million people to the US population. Of this, 3.5 million came from China, South Korea, Japan, the Philippines, Vietnam and Laos.³⁰⁸ For second generation Asians the rate of marriage outside of their race now runs at more than 30%.³⁰⁹ At the same time, Hispanics now number 25 million or 10% of the population, compared to 13% for blacks and 74% for non-Hispanic whites. However, by 2010 they will be the largest minority³¹⁰ and by 2050 no racial group in the US will occupy a majority position.³¹¹ Therefore, while interracial marriages are currently only 2.2% of all marriages, the numbers are likely to increase.

Moreover, along with this, though of course not dependent upon it, the number of mixed-race babies has multiplied twenty six times as fast as any other group. In 1990, the Census Bureau found that 1.8 million children were born of mixed-race marriages.³¹² This was more than 3% of total births.³¹³ In addition, 35.4% of black women married to

black women married to white men suggest that they plan to have children compared to 29% for white women married to white men.³¹⁴ Therefore, Time magazine's Jill Smolowe is probably correct to suggest that "during the past two decades, America has produced the greatest variety of hybrid households in the history of the world." As she notes, the "huddled masses" have given way to the "muddled masses," so that "As ever increasing numbers of couples crash through racial, ethnic and religious barriers to invent a life together, Americans are being forced to rethink and redefine themselves."³¹⁵

Accepting for the moment that they have appeared as a recognisable group identity, the particular focus of multiracial advocacy groups like the San Francisco based Association of Multiethnic Americans (AMEA) has been the Office of Management and Budget's (OMB) Directive 15 which sets out the categories of racial identity to be used on the decennial census and especially the monological assumptions which organise them. As the AMEA has suggested, a number of discriminatory effects follow from this, not the least of which is a denial of equal protection. As Carlos Fernandez, the AMEA coordinator for law and civil rights, argued when giving testimony before the House of Representatives Subcommittee on Government Management, Information and Technology in July 1997:

OMB Directive 15 forces government agencies to make unconstitutional demands of multiracial/multiethnic individuals by (1) requiring them to give false information on official forms; (2) invading their personal privacy right to their actual identity; (3) invading the personal privacy right of multiethnic families by interfering with the child-parent relationship, that is, by requiring a child to deny the ethnicity of one or the other of her/his parents; (4) invading the privacy and *equal protection* rights of individuals, particularly public school children, by subjecting them to a so-called 'visual inspection' procedure to which members of no other populations are subject; (5) denying them the benefits and civil rights protection which other people enjoy by virtue of being counted specially.³¹⁶

The crucial point here is that because they determine the racial distribution of the population, and thus allow for a comparison of the impact of state and federal laws on

different groups with regard to their discriminatory effect, the categories of the census are the starting point for political rights in US law. Therefore, in order for a group to claim that it is a suspect class of persons it first has to be identifiable on the census, since it is only through the data collected on the census that a group can show that it is being discriminated against. The political challenge in the US is therefore not simply to change the law but to change the method of identification through which the law is operationalised. This is why the OMB's Directive 15 is the focus of critical attention for the multiracial movement. Indeed, in the testimony cited above Carlos Fernandez suggested that the adoption of a new multiracial classification would be a basis upon which multiracial groups would petition Congress to pass legislation granting protection to multiracial Americans.

In what is still the only case of its kind to be brought, on December 11, 1995, Loretta Edwards filed a federal lawsuit against the OMB for discrimination on behalf of her two racially-mixed daughters. As the suit argued, "Directive 15 is arbitrary, unjust, discriminatory in effect and on its face, and is not in accordance with the authority of the OMB and the US Constitution. It has the effect of denying to AMM and AJJ [the children], and to their mother, equal protection of the law."³¹⁷ Meanwhile, there is a Bill currently working its way through Congress which would require all federal agencies to recognise multiracial identity in the data they collect and the reports they publish. Titled the Census Bill (HR 830) or alternatively "The Tiger Woods Bill," it would correct the situation in which, as its sponsor Republican Tom Petri suggests, "In the case of multiracial individuals we are asking them to choose between one parent and the other, or possibly between four different grandparents."³¹⁸

What this Bill and groups supporting it like the AMEA, as well as individuals like Loretta Edwards, are therefore challenging is the way in which the rule of hypodescent - otherwise known as the "one-drop" rule - which I referred to above still organises racial identity in America.³¹⁹ This is because although the one-drop rule does not prevent

black/white multiracials from self-identifying as white on the census, it has fostered the belief in American understandings of race that racial identity is monological. The problem for multiracial people, then, is partly that the one-drop rule affects judicial interpretations of racial identity with respect to equal protection, and partly that it affects the Census Bureau's understanding of racial identity when it presents Americans with the racial categories through which they can self-identify. As this suggests, from a legal and administrative point of view multiracial individuals have the rather odd experience of being censored *before* they appear as political-legal subjects since the one thing that they cannot appear as is multiracial. To the courts they can only appear as black, and to the administrative arm of government they can appear as black or white. However, in neither case can they appear as both; and for this, as I have noted, they largely have the one-drop rule to thank. As Ramona Douglas, President of the AMEA has pointed out, this rule means that mixed-race individuals are perfunctorily pigeonholed from birth according to the racial identity of their minority parent. And as she notes, the one-drop rule is more stringent than the Nazi treatment of Jews, for whom having Jewish grandparents determined racial identity.³²⁰ In contrast, as we have seen, American racial classifications determine an individual as black if they merely have one-thirty-second of black ancestry; in other words, it refers back not merely to two but rather to four generations.³²¹

In fact, the lawsuit filed by Edwards was denied a hearing in the Florida federal court where it was filed, and the OMB's review of its racial categories produced mixed results for the multiracial movement. When the proposals for the categories to be used on the 2000 census were released in July 1997 it was decided that Directive 15 would not refer to a multiracial category. However, the category of "Other," which until this point had been the only way in which racially mixed individuals could express the fact that they identified with neither black or white, was replaced by the opportunity to identify with as many of the existing categories as were relevant. In other words, the OMB clearly acknowledged the existence of multiracial identity yet failed to grant it the same equal

status as other existing categories such as white, black, Native American, or Asian and Pacific Islander. As Charles Michael Byrd, the editor of the bimonthly internet journal "Interracial Voice" commented on "The Jim Lehrer Newshour" following the OMB's decision, "There is [still] no opportunity to represent oneself as multiracial....[To do this] you have to have your own icon, a symbol that is representative of an individual of mixed-race who identifies as other than monoracial."³²² As Gilanshah points out, this may be due to size, since the history of equal protection jurisprudence suggests that the larger the population which is affected by discriminatory laws the more likely it is that protection will be granted. However, as he adds, this jurisprudence also reflects an appreciation that the term "minority" refers not simply to size but also to an identifiable disadvantage.³²³

While the OMB assessment was taking place there occurred an often acrimonious debate between multiracial advocacy groups and members of the black civil rights movement over the political significance of recognising multiracial identity on the census. While for many multiracial individuals it appears that the right to self-identify represents what F. James Davis amongst others has described as "the next logical step in the progression of civil rights,"³²⁴ because this progression would entail a reorganisation of affirmative action guidelines, state and congressional districting, minority assistance programmes in low income areas, and the enforcement of federal antidiscrimination statutes,³²⁵ many on the left have pointed out that by reducing the numbers of people registered as black such a move would negatively affect the opportunities for people of colour in general and thereby reinforce the right-wing agenda which they see at work in the shift towards colour-blind interpretations of the equal protection clause. Thus, although black leaders have been judicious enough not to argue that multiracial individuals cannot self-identify, they have argued that this should be done in areas outside the census categories.³²⁶ I take up this question again at the end of the next chapter and then again in the case study. It is important because it raises the issue which I

have chosen to overlook here, the issue of multiracial individuals who fall outside of the black/white paradigm and who are therefore not directly affected by the dictates of the one-drop rule but who are still affected by the monoracial structure of the census. As we shall see, much of the legitimacy to be found in the claims made by the multiracial movement rests upon the distance from black identity which these individuals allow it to open up.

As an issue of equal protection we can also explore an analogy between recognising multiracial identity and recognising homosexual identity. For both cases show that the limits of equal protection are only worked out through the use of classifications which require the repudiation of certain racial and sexual identifications. As with multiracial critics of the existing racial categories of the census, the key point for critics of the existing jurisprudence which denies equal protection to gay men and lesbians is to show that sodomy laws are discriminatory because homosexual identity is not immutable. As Janet Halley points out in her review of the cases *Bowers v. Hardwick* and *Paudula v. Webster*, by associating homosexual identity with homosexual conduct the sodomy laws in the seven US states which have them make homosexual identity an immutable characteristic of gay men and lesbians.³²⁷

However, as Halley argues, it is because homosexual identity is in fact highly mutable in the same way that racial identity is, that the classifications deployed in state sodomy legislation violate the equal protection clause by drawing "invidious distinctions" among its citizens. In other words, it is because individuals literally tend to pass between heterosexual and homosexual identity at different stages of their lives,³²⁸ rather than being born with an inherent proclivity for either orientation, that classifying homosexual identity by the act of sodomy is highly discriminatory. In most cases it tends to be highly underinclusive, especially of those who would identify themselves as gay or lesbian but who do not practice homosexual sex.³²⁹ As Halley argues, questioning the association between conduct and identity opens the way for the courts to apply a heightened scrutiny

to state sodomy laws, since the denial of such scrutiny has been based upon the view that sodomy is the behaviour that defines that class of persons.³³⁰

Up to now heightened scrutiny has been denied on the basis that if sodomy is the behaviour that defines that class of persons who are referred to as homosexual, then legislation directed specifically towards them cannot be thought of as discriminatory. The point here is that existing state laws on sodomy in fact define the criminal by the crime, so that declaring oneself to be gay or lesbian becomes an admission that one has broken the law: that one has committed sodomy. In other words, because homosexual identity is equated with sodomy and because sodomy is illegal, then declaring oneself to be homosexual amounts to an admission that one has broken the law. The important thing to note here is the way in which the law conflates speech into conduct, so that speaking about is equivalent to having engaged in. As a result, we can see that the possibility of heightened scrutiny, and thus an extension of equal protection to gays and lesbians, is ruled out by the way in which the law represents homosexuality. That is, in asking for equal protection gay men and lesbians are automatically denied it because in doing so they are breaking the law. As Halley points out, they are left in the curious position where they can lobby for changes in the law by speaking *about* homosexual identity, but they cannot make such moves by speaking *as* homosexuals.³³¹

In attempting to challenge this definitional structure, Halley turns to First Amendment jurisprudence which separates speech from conduct. As she argues, this would allow gay men and lesbians to speak as homosexuals up to the point of advocating the criminal act of sodomy. It is therefore in this space that the possibility of introducing heightened scrutiny and therefore equal protection for gays and lesbians might at last appear.³³² As Halley reiterates, it is not the class of gays and lesbians which requires heightened scrutiny but rather the classification of homosexuals as anyone participating in the antihomophobic argument.³³³

In the absence of Halley's proposed reforms, the overall impact of this is similar to that experienced by both ethnic minorities and multiracial Americans. That is to say, if homosexual identity is understood to be inseparable from the act of sodomy, then gay men and lesbians are forced to pass on this part of their identity (their sexuality) in the same way that ethnic minorities are forced to pass on those parts of their ethnicity which fall outside the court's interpretation of race and that multiracial individuals are forced to pass on the racial identity of one of their parents, both by the one-drop rule and by the larger monological understanding of racial identity which it has put in play in such crucial areas as the census. That is to say, because homosexual identity is not covered by the existing scope of the equal protection clause, so that "Antihomosexual discrimination encourages people to manipulate the identity they attach to themselves, both in the secrecy of their own minds and on the public stage"³³⁴ this reproduces the same move as the reduction of ethnicity to race in the mind of the courts and the reduction of multiracial identity to a monoracial logic.

Keeping this analogy in mind, we can note Halley's observation that "The conception that the human world is bifurcated into homosexual and heterosexual may be distorting but it is, in modern American life, virtually ubiquitous."³³⁵ As she adds, it is "because the assumption of heterosexuality applies in virtually every social interaction,"³³⁶ and because these interactions are multiple and usually disconnected, that the gay man or lesbian will have to either repeatedly face the trauma of coming-out or else "acquiesce in the assignment to her of a nonreferential public identity."³³⁷ As a result, just as the existing system of recognising race works to censor the way in which multiracial individuals speak as racial subjects, forcing them to choose between monoracial categories on the census, so "The legal and social burdens imposed on homosexual identity deter individuals whose desires and behaviour are entirely or partially homosexual from acknowledging that fact."³³⁸ Nevertheless, as I argue in the case study to this thesis, the relationship between multiracial and gay and lesbian identity

is far more complex than the simple analogy which I have sketched out here. Indeed, I shall attempt to put in question the very assumptions which lead us to use analogical reasoning as a critical strategy. Instead, once we look at the way in which race and sexuality intersect in those existing norms which constitute American identity, then the tensions at work in this analogy start to open multiracial identity up to a more critical assessment of their claim to represent the next stage in the progressive extension of civil rights.

My point here will be that once we start to look at the intersection of race and sexuality we come across such political identities as the multiracial American who is also gay or lesbian. Here we will be able to see that according to the limits set on equal protection and political inclusion by both contemporary American jurisprudence and by the dominant cultural narratives of American identity, the demand for recognition as a suspect class of minority made by Loretta Edwards, as well as the more generalised demand for inclusion on the decennial census made by many multiracial advocacy groups, is one which only takes place within the repudiation of their sexual identification by multiracial Americans who are either gay, lesbian, or bisexual. As I will try to show, such political identities highlight not only the critical limits of analogising between race and sexuality, but also the way in which the differential structure of inclusion surrounding race and sexuality turns not only everyday cultural forums such as newspapers and magazines but also the law into sites where the type of power described by Foucault as productive of political subjects is exercised.

Obviously, I need to point out here that since multiracial identity itself has only just been given a limited recognition on the census, though as I noted above a congressional bill is pending which would take this much further, and since gay men and lesbians are not included within the groups currently covered by the equal protection clause, it is impossible to focus on legal cases where multiracial Americans who are gay or lesbian have made a demand for recognition on their own as a suspect class of persons.

That is to say, they cannot be represented as an idea either in cultural discourse or in the law. In this respect, gay and lesbian multiracials appear as something of a thought experiment in my case study. Unable to identify them yet as a politically active group, I instead show how their possibility appears within the attempt to think the limits of recognising multiracial identity in the context of both the dominant cultural narratives of American identity and the current interpretation of the equal protection clause as it applies to homosexuals. I would argue that this approach is justified because, as Heidegger and Derrida have shown, it is only in "thinking" that beings can be revealed in their Being. In this respect, my thought experiment allows my case study to become precisely what I have indicated it must be, a "limit experience." In other words, in thinking we encounter a limit experience because its relationship to the presencing of the present ensures it is always an experiment in how political identities are produced. Thus, it is by thinking what must be repudiated in multiracial identity as it either builds a campaign for equal protection before the law or is represented in the mainstream US press as indicative of American cultural values that it is possible to encounter the experience of gay and lesbian multiracials.

Summary

Because each of the three chapters in this part of the thesis focus on a particular aspect of the relationship between the subject and the law, and because the narratives constructed there differ considerably in the texts upon which they draw, in this brief conclusion I want to reiterate the issue which I believe joins them together. This issue can be traced back to our discussion of Kant in chapter four. Here we found that because of the limits which experience places on the authority of reason as a source of knowledge, so that we are unable to construct an empirical understanding of a pure idea, the law as the idea of Justice was in fact unrepresentable. Instead, Kant's account of

aesthetic judgment in the third Critique suggested that this idea could only be encountered in those limit situations when we can no longer totalise the manifold of sensory experiences which appear before our imagination into a schema image. In other words, it is the failure of the imagination in the act of cognition which suggests that we are before the law as an idea of Justice. Kant of course called the reactions which we have at these moments judgments of the sublime.

As I suggested in my critical interpretation of the primal scene in Totem and Taboo, Freud is also struggling with this issue insofar as the political subject through which the idea of Justice is experienced, the father who is murdered by his sons, cannot be represented either. As we saw here, this subject cannot be represented since in order to explain their feelings logically the sons must in fact experience their father as always already dead. The most important implication of this, I think, is that the subject who authorises the law, in this case the murdered father, cannot experience the idea of Justice. Instead, those who interpret the law, in this case the sons, are responsible for an act of violence for which they cannot be held accountable.

This idea was developed in chapter five when we considered the question of judicial interpretation. For if the law as the pure idea of Justice cannot be represented, then the act of judicial decision itself engages in an act of violence through its representation of the subject to which this idea refers. In other words, the idea of Justice is always postponed because of the particular subject through which it must be translated. We saw the political significance of this quite clearly in our reading of Hannah Arendt's early work, where it was the danger that any attempt to deal with the social question within the political realm would lead to the violent refounding of the idea of Justice by redefining the scope of the political subject from political to social equality, which led her to regard any legal act other than making an original law as essentially non-political.

The suggestion that the idea of Justice is always postponed because the subject through which it is represented is always a particular re-presentation of that idea was

taken up in chapter six when we looked at the consequences of trying to apply the equal protection clause of the US Constitution. As we found by looking at the way in which ethnic minorities, multiracial Americans, and gay men and lesbians are re-presented in judicial interpretations of the subject of discrimination, the subject who is before the law cannot experience the idea of Justice. Like the primal father in Totem and Taboo, they show that this idea in fact exceeds the subject upon which the authority of legal decisions are based. This is because, like the primal father, they mark the space of a victim for which the legal system itself cannot be held responsible. Judges are thus in the same position as the sons at the primal scene; that is, they are responsible for an act of violence for which they cannot be held accountable.

However, the paradox here which ultimately saves judicial interpretation from itself is the fact that the same inability to represent the idea of Justice which leads to its violent displacement in the subject identified in judicial interpretation is the very thing which ensures that both multiracial Americans and gay men and lesbians always have access to a critical resource which allows this interpretation to be deconstructed. In other words, there is a tension between the law as an idea of Justice and the law as a system of rules and precedents which means that each judicial interpretation brings itself back to that limit situation where its judgments are not merely beautiful but in fact sublime.

PART THREE:

CULTURAL DIFFERENCE, GROUP IDENTITY, AND THE LIMITS OF LIBERAL THEORY

In this part of the thesis I want to use the reflections which I have offered on critical agency to try to explore both the question of group identity and the larger issue of group rights as this is framed with liberal political theory. It is therefore the insights provided by my reading of Derrida which offer an opportunity to make a critical intervention into existing theories of group rights, as well as the broader assumptions of liberalism upon which these theories are based. In doing so, I extend my use of Derrida's work to those questions of location which we touched upon earlier in chapter one. That is to say, in trying to reach a point where Derrida's ethical and political insights can emerge within liberal theories of group rights, I look to explore the point at which his work intersects with the work of those who have looked at the question of cultural identity within what is called today post-colonial studies. Here Derrida's use of terms like iteration, the trace, and the performative, all of which serve to open up a space in which the self-present subject can be thought, are made intelligible through notions such as travel, diaspora, and hybridity.

It is therefore the way in which cultural identities experience iteration as they travel between (post-)colonial centres and peripheries which allows us to begin to understand group identities in terms of diaspora and hybridity. In particular, it is the way in which Derrida's notion of the trace locates movement as prior to identity which allows the post-colonial understanding of diaspora and hybridity to reflect an experience of travel which does not begin from a fixed point or origin, but rather from within a representational process in which travel performatively enacts the identities of both

cultural minorities and the so-called dominant cultures in which they appear. In other words, in taking up the post-colonial critique of location as a fixed point of identity we continue to follow the critical opportunities opened up by Derrida's insight that difference remains internal to the representation of the word, name, or phrase, so that like these phenomena cultural identity experiences a resignification as the context in which it appears changes. The important point here, therefore, is that because identity is only constituted from within the movement of the trace (that is, the trace as the thought of movement) both dominant and marginal group identities lose their claim to self-presence.

If this requires us to rethink the traditional concept of group identity found in the political science understanding of diaspora, in which the "host country/homeland" framework serves to reinscribe the distinction between dominant and minority cultures, then it also requires us to rethink the liberal discourse on group rights. For if we take Derrida's point that there are no centres to identity but instead only a system of peripheries, or what he refers to in one essay as "borderlines," the fact that the identity of a dominant culture cannot be represented without incorporating the trace of a minority culture forces us to reformulate the liberal assumption that in allocating rights dominant cultures have the authority to judge the "authenticity" of minority cultures. It is therefore where the trace of a minority culture provides the minimum level of difference which allows a dominant culture to be represented, that the lack of authenticity in a "dominant culture" removes the authority upon which it can claim the right to judge whether "minority cultures" fulfill the criteria which it sets down for the protection of its group identity.

Within this, I argue that the critique of identity offered here - a key element of which is that the assumption that there are "authentic" identities has to be seen as a strategy of discipline which liberal theory puts to work on both individuals and groups - allows us to question some of the broader assumptions of liberalism around which the theory of group rights is based. Perhaps the most important of these is that at work in

contractual theories of liberalism such as that offered by John Rawls. Here Rawls' formulae for achieving a basis for distributive justice, his notion of an original position, is seen to rely on the assumption that it is possible for all the participants in this position to be *just* the victim. In this respect, the connection between Rawls' individualism and the theory of group rights is that in order to be seen as authentic a minority culture has to represent itself as just the victim. In other words, it must repress the tension between the victim and the oppressor which appears at the intersection of race, gender, sexuality, age, and class in the signification of group identity. In this respect, the discourse of authenticity becomes the way in which the disciplinary implications of Rawls' original position are extended to group identity.

One of the sources from which I draw the inspiration for this critique is Gayatri Spivak. As she has demonstrated in her analysis of the "subaltern subject-effect," the identity of the victim is never an original position but is instead always already overdetermined by the identity of the oppressor. Spivak illustrates this through her analysis of what she calls "post-colonial woman-space." As she suggests, even while attempting to resist colonial domination Third World governments reproduced their own sites of oppression in the identity of Third World women. Following Derrida, she therefore suggests that just as difference persists within identity so the identity of the oppressor persists within the one who is the victim. Thus, as the subaltern subject-effect suggests, the victim never finally gets to speak. Instead, the repudiation of difference required to organise resistance leads the identity of the victim to be constantly reproduced in an endless series of enabling displacements. The point here, of course, is that, as we have seen in part one, such a contradiction is internal to the possibility of any critical agency, and in this sense is non-reducible if political action is to remain orientated to the thought of the political.

Through this critical discourse, Spivak opens a space in which the implications of Derrida's view of duty as an over-duty can be put to work within liberal theory. In this

respect, when any attempt to resist oppression unavoidably involves the victim in its own act of violence, the essentialisations of identity so basic to the discourse of authenticity and so obvious in Rawls' original position do not have to be rejected out of hand. Rather, if they can be seen by those adopting them as the contingent tactics which are necessary when the intersection of race, gender, sexuality, age, and class leaves our identification in an overdetermined structure where victim and oppressor are simultaneously inscribed, then, and only then, can they be justified along the lines of what Spivak calls "the strategic use of a positive essentialisation in a scrupulously visible political interest." The point here is that given that the designation of legitimate identity marks out the boundary of the political, identity itself now has to be seen as a form of political strategy, wherein the essentialised image of the victim can be asserted in the visibly scrupulous interest of creating a context in which further sites of oppression can then be made intelligible. As such, it evokes the spectre of Derrida's claim that there is nothing less outdated than the classical emancipatory ideal. Instead, as he maintains, new grounds of emancipation must constantly be opened up. In this respect, the point about Spivak's "strategic essentialisms" is that they must be undertaken with a conscious attempt to keep the contradictions between our identifications constantly in view, rather than to see this privileged subject position as a singular and final judgment about the parameters of our subjectivity.

The visible consequences of this critique of the liberal understanding of the victim can be seen in those areas of feminist legal theory where an attempt has been made to render the identity "woman" more contestable. It is because difference persists within any articulation of the name "woman" that writers such as Angela Harris have identified a tension within feminist legal studies in which the identity of black women comes to occupy a place similar to that held by Third World women in Spivak's analysis of the colonial subaltern. That is to say, in resisting the terms of male oppression the essentialisation of female identity as the site of the victim has produced a white, Western, heterosexual, middle class, middle-aged, able-bodied, female subject. The important

point to keep in mind here is that excluding the racial experience of black women from feminist discourse leaves a tension between the victim and the oppressor in the identity "woman," one which under a self-critical spotlight sees the object of responsibility move off in two contradictory directions. As Spivak's notion of strategic essentialism suggests, the critical challenge for all those identifying with the name "woman" is to name the intersections with race, gender, sexuality, age, and class which represent the greatest current danger while recognising that this can only be an opening to more critical engagements with those basic liberal questions of equality and toleration.

Such a critical engagement seems to be necessary because the problem of locating the victim in the experience of women suggests that without a universal referent such as the victim to fall back on, these other basic points of reference in liberal theory also need to be brought back within a space in which their coming into presence can be thought. That is to say, the persistence of the oppressor within the identity of the victim suggests that both toleration and intolerance and equality and injustice are not finally opposed. Instead, as the operation of the subaltern subject-effect in the name woman suggests, intolerance persists within a moment of toleration and injustice continues to exist even within equality. Because of this, their critical possibility depends on our commitment to constantly think the limits within which they are used and to identify the aporia around which this limit is organised. Such a position also appears in the work of a number of other critics who have seen the necessity of working against liberalism from *within* its own metaphysical assumptions.

For example, in his reading of Todorov's The Conquest of America, William Connolly shows how the idea of toleration only emerges at the limits of liberalism's finite universalism. As he suggests, up to this point liberals are conquistadors, which is to say that they would rather conquer or convert. In this respect, toleration at best stands for the repression of more basic feelings of hostility towards the other. Slavoj Žižek makes a similar point in his analysis of formal democracy. As he says, while the principles of

formal democracy point towards universalism they remain stained by the singular site of nationness which allows these principles to be given substance. Thus, like Connolly, he detects what he calls the "totalitarian temptation" in liberalism's relationship to its others. Finally, Gassan Hage focuses these points when he observes that the internal logic of toleration is the ability not to tolerate. As he notes, toleration implies that relationships of domination are still in place; those who have the power to be intolerant are simply asked not to exercise it. Under these circumstances, "accepting" the other turns into a practice of positioning closely akin to Foucault's idea of governmentality. As Hage points out, if it goes without saying that the other is one of us, then saying his or her name shows that she really is not.

In terms of the attempt to theorise the basis of group rights undertaken by writers such as Charles Taylor and Iris Marion Young, we have seen that the critical interventions made possible by post-colonial studies and critical feminism have two important consequences. Firstly, that no group has an authentic identity, and secondly, that no society can exist without oppression. The first point is important because it subverts the attempt made by Taylor to take authenticity as the basis for allocating the right of protection to minority cultures. For Taylor, authenticity provides the basis for minority recognition since authentic cultures are ones which have persisted over a lengthy period of time, thus allowing the larger culture of which they are a part the possibility of its own self-recognition.

The second is important because it shows the limitations of Young's desire to use group identity as a way of negotiating just political outcomes in a democratic society. The point here is that the desire for such a non-oppressive society creates a tension in Young's approach between an attempt to stress the fluid nature of group identity and the need to make groups present as political identities. She is therefore drawn into the same distinction which animates Taylor's argument, that between authentic and inauthentic cultural identities. At the heart of this question, therefore, is what Spivak calls the

demand which discourses of authority place on subaltern identities to "speak as" themselves when this self is composed of multiple subject positions which no single act of self-representation can begin to cover. Thus, the demand which Taylor and Young make for authenticity has an inevitably homogenising effect on that minority culture to which it is directed. As a result, in arguing that minority groups should be given equal political rights, Young in fact reproduces the same oppression *within* these groups which she believed they experienced within the culture of the dominant society.

As such, a Derridean ethics emerges within liberal theories of group rights on the basis that the minority identities recognised there cannot be judged within a view of morality which seeks to oppose the authentic to the inauthentic. Instead, since there is always a moment of essentialising violence in the representation of the group, they need to be seen as ambiguous achievements in which the protection which their recognition offers will always be overdetermined with danger by the repudiations which the demand for recognition sets into motion. As a result, the relationship between liberalism and such values as toleration and equality should be seen as contingent rather than foundational. In this respect, the most critically significant step to take is to argue that because the politics involved in recognising a minority group do not simply concern the surrendering of privileges by a dominant culture, but rather the reproduction of that culture in its dominant position, the task of deciding which minority cultures have a right to what Taylor calls "survival" cannot be legitimated through reference to a moral imperative whose content is outside of an ideological formulation in which there is an exercise of power: the kind of power which produces minority groups as "minorities" by censoring a priori the identifications through which they can demand protection.

I approach this analysis here in two stages. Firstly, I review the literature from post-colonial studies as I see it relating to the question of group identity and the relationship between victimisation and oppression. In considering the way in which the experience of travel affects our understanding of cultural identity, so that local national

cultures and global diasporic cultures are seen less as fixed and closed spaces and more as hybrid or third spaces, spaces in which their identity is subject to an on-going reconstruction through the substitution and displacement of their cultural signifiers, I therefore lay the basis for a critique of the distinction drawn in liberal theories of group rights between dominant and minority cultures, and authentic and inauthentic cultural minorities. That is to say, rather than the minority groups identified in diasporic cultural identities or the dominant groups associated with terms such as the nation or national identity, both minority and dominant groups exist within a more phenomenologically structured Being-in-the-world.

Meanwhile, the questions of self-representation which the hybrid post-colonial identity raises is taken up by Gayatri Spivak to show that the identity of the oppressor persists even within the representation of the subaltern. The point here, as I have suggested, is that as the subaltern the victim never finally gets to be represented. Instead, in each context it refers back to those subject positions whose repudiation allows the identity currently designated by that term to be made present. In response to this, Spivak's notion of strategic essentialism offers one way of finding a more ethically adequate path through the tension between the need for representation and resistance and a responsibility to the repudiation which makes that resistance possible.

Secondly, this sets up a critical position through which to read liberalism, not so much as a political theory than as a site for the coming into presence of the political itself. Here the concerns of post-colonial critics like Spivak are reflected on a number of levels within liberalism. In its broader context, the question of the subaltern raises questions about the possibility of equality and toleration as liberal values. If the oppressor remains internal to the identity of the victim, then the issue arises of whether toleration can finally be separated from intolerance and whether equality can ever be divorced from injustice. Thus, and on another level, the attempt by rights theorists such as John Rawls to ground equality on the principle that everyone can represent themselves as just the

victim appears to be profoundly misleading. In order for his notion of the original position to provide a foundation for a just society, Rawls has to make the assumption that in taking on the possibility that we might be placed in the worst position society can offer we can think of ourselves as just victims. However, as Spivak shows in her account of the subaltern subject-effect, there is never an original position from which questions of justice can be resolved, only the possibility of thinking critically about the way in which identities come into presence, and thus of taking an ethically strategic attitude towards identity itself. Spivak's concerns in turn are reflected in two contemporary discourses on political rights: feminism and multiculturalism.

Here the question of the relationship between group identity and group rights is brought into focus. In the case of feminism, it is the repudiation of certain sites of female identity, such as those relating to race and sexuality, which allow the name "woman" to gain rights within a male dominated society, while within multiculturalism it is the equivalent repudiation of gender issues which allows groups like Asian-Americans to be represented as a model minority. In other words, there is a performative tension between rights and identity in group politics, one where the liberal imperative of measuring justice through equality exerts an homogenising effect on the minority groups seeking representation. In Spivak's terms, it is the demand to "speak as" the authentic representative of women's concerns or of the Asian-American community which constantly leaves black women or female Asian-Americans at best liminally present within the groups through which they are supposed to gain political rights. This tension is both raised but also displaced in the theoretical formulations of writers like Charles Taylor and Iris Marion Young, where a metaphysical distinction between authentic and inauthentic cultural minorities and dominant and minority cultural identities serves to naturalise what, on the one hand, involves an arbitrary act of essentialisation and aggregation, and, on the other, an act of cultural appropriation through which the boundary between dominant and minority cultures is reproduced and for which no

responsibility is acknowledged: the sort of responsibility which Spivak's understanding of the strategic use of these moves gestures more adequately towards, and which would be more consistent with the "spirit" of liberal universalism.

CHAPTER SEVEN

CULTURAL DIFFERENCE AND SUBALTERN IDENTITY

Over the last ten years, writers in such fields as anthropology, ethnography, cultural and post-colonial studies have explored the question of identity, and especially the always already transformative nature of identity in its relation to any given cultural context. This has led to significant insights into both our conceptualisation of identity and the processes through which it is constructed. Within this, they have drawn attention to certain notable features of Western modernity such as colonisation and migration. The main critical challenge here has been to explore the way in which what have been described as "post-colonial subjects" display an uncanny yet rarely understood capacity for subverting dominant cultural codes, and thus for reformulating the critical parameters within which metropolitan and diasporic discourse is construed. It is this subversion and the transformative rearticulation which takes place within it which thus provide the staging ground for reconceptualising identity. In their different ways, these studies therefore raise what Derrida calls the question of the "centre," since it is the question of whether there is a centre to any cultural identity - both metropolitan and diasporic - and the consequences which follow from this which these fields of study raise. Derrida's reason for looking at the centre is to show that it is never the centre *as such* that we look at, but rather, as we saw in the introduction to this thesis, a place where "an infinite number of sign substitutions come into play."

Rather than a centre, cultural theorists have therefore looked at cultural identity in terms of what Derrida calls "a weave of pure traces," so that their chief characteristic is that they do not begin from an origin but rather from within a system of differentially related signifiers. As a result, instead of being authentic their origin in fact represents a

kind of take-off from nowhere. Consequently, as Derrida has argued, all identities are from the first moment reproduced, so that whatever relationship they have to self-presence arrives belatedly as an after effect of systematically juxtaposing cultural differences. However, as Derrida stresses, the point here is that because they require a new set of differences for each act of self-representation, identities are always in a process of travel so that whatever self-presence they have is an effect of their *movement between* these signifying differences. Derrida uses the term iteration to describe this process of identity formation, the chief characteristic of which, as we can see, is that it is a highly contingent inscription for which there are no prior grounds.

For example, Stuart Hall has suggested that:

Perhaps instead of thinking of identity as an already accomplished fact, which new cultural practices then represent, we should think, instead, of identity as a 'production', which is never complete, always in process, and always constituted within, not outside, representation. This view problematises the very authority and authenticity to which the term 'cultural identity', lays claim.³³⁹

It is for this reason, therefore, that Hall and others have called attention to the issue of location or positioning. It is because representation is not the act of a disembodied subject, but instead is always mediated through the cultural location in which the speaker is positioned, that these terms have gained a critical significance; in particular, through the way in which they challenge the image of the political which informs conventional approaches to political theory. That is to say, it is because representation has been deconstructed and thus revealed as reflecting the norms of the dominant culture, that the political has to be rethought: not as a neutral space in which politics takes place, but instead as a site of contestation where the exercise of power is brought into play. In other words, it is now realised that the political itself must be represented and that as such it must pass through a moment of difference which excludes other possibilities for defining

the political a priori. It is because of this that we therefore refer to the "politics of identity" not as something which takes place *within* the political but rather as that which concerns the very terrain of the political itself. This is because although the political is located on a privileged site of cultural difference, the cultural identity positioned there is never finally closed. Hence, its appearance signifies an act of force which, as Derrida has pointed out, exceeds the metaphysical parameters of justice and injustice and instead installs the very terms of justice upon which the closure of the political takes place. In this respect, it is useful to keep in mind Hall's suggestion that, "Cultural identities are the points of identification, the unstable points of identification or suture, which are made, within discourses of history and culture. Not an essence but a positioning. Hence, there is always a politics of identity, a politics of position, which has no absolute guarantee in an unproblematic 'law of origin'."³⁴⁰

Given that identity does not follow the straight line of a single culture, a single position or a single history, but rather is shot through with the experience of movement and alteration, Hall proposes that the formation of identity can be explored within a framework of axes or vectors in which similarity and continuity is pitted against difference and rupture. One provides for a grounding, a sense of being rooted in a past whose memory and remembering provides a sense of continuity in the present. The other, however, reveals that the ground beneath our cultural experience is always moving, so that the discontinuities of the constantly appearing present induce the equally constant reformulation of a past which in fact had never been rooted. As Hall suggests, under these dialogical conditions, "difference, therefore, persists - in and alongside continuity."³⁴¹

James Clifford gets at the nature of this experience through his notion of "traveling cultures." Clifford's argument, which is made within the discipline of anthropology but which clearly has wider implications for any discipline whose critical discourse depends on the assumption of settled cultural identities, is that the analysis of

ethnographic communities has traditionally privileged the experience of dwelling over travel. Against this, he argues that "once the representational challenge is seen to be the portrayal and understanding of local/global historical encounters, co-productions, dominations and resistances, then one needs to focus on hybrid, cosmopolitan experiences as much as rooted, native ones."³⁴² In other words, both territorially bounded communities and the groups moving between them will always evidence multiple connections which criss-cross one another. Less like permanent dwellings, the dominant group identities which we conventionally associate with territorially based communities then appear more like hotels and motels. As Clifford suggests, they are places where our identifications visit, possibly linger, but never stay.

The point which needs to be stressed here, of course, is that the experience of travel also disrupts the "law of origin" to which Hall refers, and whose presupposition is used to authorise the idea that each cultural identity has a centre around which it circulates and to which it can return. Instead, Clifford notes that the identity "Haitian" now dwells not only in the Caribbean but also in Brooklyn and Paris, as well as a number of other places,³⁴³ so that cultural identity itself has become part of that "wider global world of intercultural import and export"³⁴⁴ which is challenging the presupposition that any given territory, law or Constitution can enclose as a totality the identifications which orientate the individuals who live inside and appear to identify with it.

Both the complexity of these traveling cultures and their implications for any law of origin is gestured at in Arjun Appadurai's notion of "global ethnoscares." Appadurai suggests five scapes - ethnographic, technological, financial, media and ideological - which together provide the co-ordinates against which disjunctive patterns of representation create multiple and overlapping identifications. For against these scapes, each of which runs partly on its own logic and partly in relation to the logic of the others, is located another field of vectors which includes states, multinational corporations, sub-national groups, and even villages, neighbourhoods, family communities, and

individuals. Within this, Appadurai suggests that actors create "imagined worlds" out of the narratives constituted through the interaction between themselves and the scapes. Each world is therefore a geographically and historically situated site of subjectivity, but its imagination is mediated and thus partly constituted by its connection to global informational flows.³⁴⁵ What Appadurai therefore suggests is that the identities created in these worlds are highly fluid since they interact with the movements within and between the different scapes and at certain points, such as the finance and mediascapes, feed back into them. The overall effect of this, Appadurai suggests, is to draw identification away from any fixed territorial location, since the logic of this hybrid global-local system defies the attempt to name any point of central reference. Thus, neither the scapes nor the identities with which they interact are ever finally constituted.

Post-colonial writers and anthropologists such as Hall, Clifford, and Appadurai have therefore been able to restage the interpretive parameters of colonialism by situating it within the wider framework of globalisation, something which in turn allows a more critical reflection on some of the more totalising narratives which have been identified with this term. Although not wishing to digress very far from the question of cultural identity, we can at least say that a focus on some of the more dislocating moments in the globalisation process, such as those gestured at by the disjunctive vectors used by Hall and Appadurai, interrupt the identification of colonisation with some of the grander narratives of historical modernity as well as with some of the more pessimistic reflections on the late or post-modern configuration of this discourse. Thus, where Western Marxism and neo-Kantian critical theory map colonisation and indeed globalisation within a monological vector of universalism and integration, more recent critics such as Frederic Jameson have adopted an equally essentialising line in which the latter has been wholly superseded by the horizontal vector of particularity and fragmentation.³⁴⁶ Within the former process tensions and ambivalences in cultural identity are effaced through reference to the homogenising norm present in such

humanistic discourses as human rights, while in the latter cultural particularity itself becomes a re-cycleable product of late-modern capitalism.

However, located within the more disjunctive account of globalisation which post-colonial writers provide for, colonisation itself becomes part of the process through which its authority, based upon the centre/periphery model of culture, science and race, is radically undermined. For it is the very transversal process, internally inscribed in the practice of hierarchical domination through trade in slaves and other forced migrations, which renders this guiding model of relations always already decentred. In the light of the critical interpretive possibilities opened up by globalisation, post-colonialism therefore re-reads colonisation as a process of transcultural doubling in which the sites of both the coloniser and the colonised are overdetermined by the experience of movement which was ironically central to colonialism's strategy of knowledge and control. As Hall has suggested, "'Global' here does not mean universal, but it is not nation - or society - specific either. It is about how the lateral and transverse cross-relations of what Gilroy calls the 'diasporic' supplement and simultaneously dis-place the centre-periphery."³⁴⁷

In other words, without even changing our geographical location we now find that within one identification we might be the locals who define the dominant culture, but that within another identification we are relocated within another cultural network and are therefore the other and different. The subject is therefore always being repositioned and relocated, with more than one identification occupying the single ontological space which is usually allocated to it. Consequently, instead of being *either* the coloniser *or* the colonised, the subject will now be found at the *intersection* of numerous subject positions, producing tensions which therefore make it a site of acute ambivalence. In other words, we are always simultaneously both the same and different, the self and the other. Hall puts this experience very well when he suggests that "as well as many points of similarity, there are also critical points of deep and significant difference which constitute 'what we really are'; or rather - since history has intervened - 'what we have

become'." In other words, as he continues: "We cannot speak for very long, with any exactness, about 'one experience, one identity', without acknowledging its other side - the ruptures and discontinuities..."³⁴⁸

As we have just seen, along with other writers such as Paul Gilroy, Hall has used the metaphor of diaspora to try to gesture towards this type of experience. As he notes: "Africa, the signified which cannot be represented directly in slavery, remained and remains the unspoken, unspeakable 'presence' in Caribbean culture. It is 'hiding' behind every verbal inflection, every narrative twist in Caribbean cultural life... *This* was - is - the 'Africa' that 'is alive and well in the diaspora'...The original 'Africa' is no longer there. It too has been transformed."³⁴⁹ Hall's point is that neither the original African identity nor the colonising European identity are present in their pristine condition. Rather the African diaspora in the Caribbean gestures towards an alternative 'New World' presence which "is the space where the creolisations and assimilations were negotiated."³⁵⁰ For Hall, the New World is therefore "the third term," where the fateful/fatal encounter between Africa and the West was staged. Rather than providing a centre through which those in the diaspora can identify an authentic identity, it is instead the place of many unfinished displacements. As Hall puts it: "it is the signifier of migration itself - of traveling, voyaging and return as fate, as destiny: of the Antillean as the prototype of the modern or postmodern New World nomad, continually moving between centre and periphery."³⁵¹

It is this third term which is absent from the traditional political science understanding of diaspora, which is built upon largely outdated assumptions about the relationship between culture and space as well as the significance of moving between these spaces. Here the understanding of diaspora put forward by writers such as Gabriel Sheffer and William Safran remains within a specifically Newtonian view of the universe, one in which space and matter are privileged above time and movement. The result of this is that a law of origin is inscribed upon cultural identity, so that rather than

reflecting the wider world of cultural import and export, diasporic communities are understood as fixed identities which move between closed spaces.

In this understanding, the temporality of culture is thus determined by its original relationship to space, so that movement leaves the identity of both diasporas and the nations to and from which they migrate essentially unchanged. That is to say, whereas Hall and Clifford see movement as internal to the temporality of space, so that matter, as a metaphor for cultural identity, is always incomplete, writers such as Sheffer and Safran look upon movement as a secondary activity whose relationship to space and matter is always external. Sheffer and Safran thus work within a rigid centre/periphery logic of host state, homeland, and diaspora, so that whatever reference diaspora might have to Hall's third term, in this case it is constrained by the two territorial referents which preceded it. The possibility of diasporic movement is thus based on the assumption that states already exist as closed cultural spaces. In contrast, Hall and Clifford suggest that whatever temporal density states might have only appears as the after effect of cultures traveling through them. In slightly different terms, where Hall sees diaspora as the site of a new world identity in which assimilation is negotiated through a process of creolisation, Sheffer and Safran take assimilation to mean integration, something which they confirm by understanding diasporas in terms of their continued attachment to their homeland, and to which they suggest they plan an eventual return.

We can see this more clearly by exploring Sheffer and Safran's definitions of diaspora. For as Sheffer proposes, "Modern diasporas are ethnic minority groups of migrant origins residing and acting in host countries but maintaining strong sentimental and material links to their countries of origin - their homelands."³³² Thus, diasporas are understood to depart from a homeland which gives them an original and therefore authentic cultural identity. It is then this authentic relationship to their homeland which is reflected in their failure to properly assimilate into their host culture, a move which paradoxically works to justify both assimilation as a normative practice in these host

countries and the centre/periphery model within which host and homeland are framed. As Safran suggests, the defining features of diasporas are that they are "dispersed from a specific original "centre" to two or more "peripheral," or foreign, regions," that "they believe that they are not - and perhaps cannot be - fully accepted by their host society," that they therefore "regard their ancestral homeland as their true, ideal home," and that this is therefore "the place to which they or their descendants would (or should) eventually return."³⁵³ It is therefore what we might call the "colonial grammar" of the definition, the centre/periphery framework of host country and homeland, and the consequent downgrading of diaspora, which both complements and reinforces the Newtonian understanding of space and time and matter and movement. Here the law of origin which organises Sheffer and Safran in their understanding of diaspora translates Newton's view of movement as the motion of matter between closed spaces.

This is illustrated by Ien Ang when she discusses the question of (not) speaking Chinese. Ang points out that when it comes to positioning subjects within a diasporic identity German, Swedish and Norwegian immigrants to the US are not expected to know their first language, whereas members of the Chinese diaspora are always expected to know Chinese, and are despised if they don't, not only by their fellow Chinese but also by non-Chinese as well. As Ang points out, "Isn't this double standard...an expression of the desire to keep Western culture white?"³⁵⁴ As this question of retaining one's original language suggests, not only are diasporas supposed to be stable material sites which move untouched between closed spaces, it is also assumed that non-white migrants always fail to fully assimilate in contrast to their caucasian counterparts. The assimilatory norm of Western culture is therefore a contingent position, dependent as we see here on an equivalent moment of repudiation, a point which Ang makes when noting that Chinese people living in the West can become *westernised* but never purely western.³⁵⁵ For it is not merely that the term "ethnic" works to suggest that the migrant is positioned within the host country as one who does not quite belong, but that the other noun to

which ethnic usually refers, such as Chinese, also silently refers the ethnic subject to another site of belonging.³⁵⁶

The point here is that as "the third term," one signifying migration, diaspora deconstructs the claim to an authentic identity not only in the host country but in the homeland as well. As Hall suggests, The "real" Africa has been lost in its translation to the new world. As Salman Rushdie has shown in different places, the experience of diaspora alters the terrain of both the place of arrival and the site from which location was torn. In reproducing themselves anew through travel both host and homeland are transformed from within the space of cultural difference. As Rushdie notes, "it may be that when the Indian writer who writes from outside India tries to reflect that world, he is obliged to deal with broken mirrors, some of whose fragments have been irretrievably lost."³⁵⁷ Just as Appadurai speaks of imagined worlds, Rushdie therefore refers to "imaginary homelands." As he puts it, these are "fictions, not actual cities or villages, imaginary homelands, Indias of the mind."³⁵⁸

As Hall has suggested, this experience gestures towards not a pure cultural identity but instead to hybridity: "The diaspora experience as I intend it here is defined, not by essence or purity, but by the recognition of a necessary heterogeneity and diversity, by a conception of 'identity' which lives with and through, not despite, difference; by *hybridity*."³⁵⁹ For Ang, this requires keeping a "creative tension" between 'where you're from' and 'where you're at'. Where notions such as "bifocality," which have also been used to describe the diaspora experience,³⁶⁰ tend to reinscribe the space between here and there as empty in the Newtonian sense, Ang points towards the productivity of the multiple perspectives which appear when both here and there are kept in play at the same time within a single subjectivity.³⁶¹

It is this experience of always already moving between spaces, and therefore of articulating difference not within the assimilation of a cultural norm but as the "differance" which marks the ambivalent structure of all identities, and the hybrid

subjectivities which ensue from this, which not only challenges conventional notions of diaspora but also many of the important recent studies of national identity. The point here is that just as the boundary between host and homeland is deconstructed by the process of travel, so the cultural identity of the nation then becomes essentially undecidable, so that like diaspora the term nation becomes part of a "third term."

Therefore, when Benedict Anderson says, in his often quoted remark, that imagined communities are to be distinguished, not by their falsity or genuineness, but by the style in which they are imagined,³⁶² the one style which is not acknowledged is the one which allows the difference between the national self and its diasporic other to be represented. For Anderson nations style themselves; their cultural identity is taken to be self-present. However, as Derrida argues, this is possible only with the arrival of the absolutely other since this brings the minimal degree of difference which allows this culture to recognise itself as national. The arrival of the absolutely other is therefore like a traumatic psychological event in that it provides the moment of otherness upon which the nation can be styled. As Derrida puts it, "One does not expect the event of whatever, or whoever comes, arrives, and crosses the threshold - the immigrant, the emigrant, the guest, or the stranger. But if the new arrivant who arrives is new, one must expect - without waiting for him or her, without expecting it - that he does not simply cross a given threshold. Such an arrivant effects the very experience of the threshold whose possibility he thus brings to light before one even knows whether there has been an invitation, a call, a nomination, or a promise."³⁶³ Without this experience, then, the nation remains unconstituted since there is no apparatus of difference through which to represent it. Instead, responding to the arrival of the arrivant simulates the effect that the nation has a founding event, a cultural norm or a style; the one who arrives brings this possibility to light.

In his critique of Anderson, Homi Bhabha has argued that the nation is not an imagined community but rather "one of the major structures of ideological ambivalence

within the cultural discourse of 'modernity'.³⁶⁴ Rather than accepting Anderson's account of the nation as the experience of a "homogeneous empty time,"³⁶⁵ the time-space which is filled by the narrative history of nationhood created at the nexus of the appearance of the market economy, the middle class, the novel, public literacy and the printing press, Bhabha suggests that "cultural movements disperse the homogeneous, visual time of the horizontal society because the present is no longer a...motherland around which are gathered and differentiated the future and past...as a present of which the past and future would be but modifications."³⁶⁶

Such an account of the nation, which returns it to the point where its undecidability can again be thought, shows that, like Sheffer and Satran's account of diaspora, it is an identity which emerges from within Western cultural discourse and from within the metaphysical assumptions of a centre or unity upon which that discourse is based. The critical challenge, therefore, is to try to gesture towards the *international* dimension which is at work not only on the boundaries between nations and peoples but also within the margins of the nation-space itself; that is to say, within the margin upon which the association of nation and state within a territorial space becomes aporetic. For Bhabha, it is because "the 'other' is never outside or beyond us; it emerges forcefully, within cultural discourse," that the nation is never fully constituted in the sense presupposed by Anderson, but is instead "the crossroads for a new transnational culture."³⁶⁷

At this crossroads, then, the impossibility of an assimilatory cultural norm is revealed. Instead of the nation brought together in its reading of the national newspaper, which Anderson argues has substituted for that sense of simultaneity with others which in smaller communities had been provided for by morning prayers, Bhabha argues that through colonial migration "the margins of the nation displace the centre; the peoples of the periphery return to rewrite the history of the metropolis...the bastion of Englishness crumbles at the sight of immigrants and factory workers. The great Whitmanesque

sensorium of America is exchanged for a Warhol blow up."³⁶⁸ It is this ambivalent margin, the ambivalence of the margin which is at work before all modifications of the norm and indeed before the norm itself, which therefore allows us to gesture towards the colonial history upon which the Western discourse of national identity was constituted.

This is therefore the moment when Western discourse itself becomes diasporic: which is to say, the moment when the Western concept of the nation is seen to emerge from within its own experience of diaspora. Thus, it is not the diaspora which arrives from outside a nation-space which deconstructs the territorial borders of the state. A simple opposition such as this merely confirms the boundary it transgresses. It is instead, as Derrida has shown, the diaspora who is the absolute arrivant, the one who makes everything which the border presupposes, such as the nation and idea of a dominant cultural identity which accompanies it, possible (but also impossible) which effects the crucial deconstructive move. That is to say, the image of an assimilatory cultural norm which is contained in the idea of the nation, loses its authority not because it is faced by the multiplication of other norms, diasporas attached to their myths of homeland, but because this norm itself appears from the site a margin; the margin which the arrival of the absolutely other reveals even as it covers it over. In other words, it shows that the dominant cultural identity represented by the nation only exists as such within the simulation of cultural differences encountered in and through the process of colonisation. As such, it also shows that this norm is rendered indeterminate in the play of cultural travel and imperial rearticulation, so that with the experience of migration its position of dominance is, as Bhabha puts it, "exchanged for a 'Warhol blow up'."

The point, then, is that the nation and the diaspora are never themselves *as such*. Within the process of cultural travel it is never simply a question of being either nation or diaspora. When the self only emerges as "the self" from *within* the cultural discourse of the other, the metaphors used for identity can no longer be translated from one idiom to another without the representational mixing which leaves both nation and diaspora

always already becoming. So instead of the nation and its diaspora, the centre and the margin, there is rather the "nation-diaspora" in which both are always "becoming-nation" and "becoming-diaspora" due to the effect of metaphysics and cultural power, but never the binary opposing of the two. As a result of this iterative, intertextual structure, neither the nation nor the diaspora have an interpretive unity upon which their identity can be centred. Instead, this emerges from within the representational codes of a dominant culture, but a culture whose dominance and power is always and already displaced by its interpretive dependence on the narratives of other cultures which it would then attempt to write over.

As Bhabha has suggested, "if in our traveling theory we are alive to the metaphoricity of the peoples of the imagined communities - migrant or metropolitan - then we shall find that the space of the modern nation-people is never horizontal. Their metaphoric movement requires...a temporal dimension that moves between cultural formations and social processes without a 'centred', causal logic."³⁶⁹ This temporal dimension is what I have attempted to gesture towards through the hyphenated notion of the diaspora-nation. Between these terms there is no centred, causal logic. Instead, it directs us towards Chandra Mohanty's idea that location is always a "temporality of struggle," and that to fix location spatially is to write identities politically. Like Appadurai's global ethnoscaapes and Clifford's traveling cultures, Bhabha's metaphor of movement therefore shows that the undecidability of the centre is always already at work within Anderson's imagined communities. Consequently, the centre of any cultural identity is what I would call the "dominant margin," which through the inscription of a single cultural difference is always "becoming-centred" though never centred *as such*.

The idea of becoming-centred gestures towards the third way of thinking about identity which Bhabha, like Hall, marks with the term "hybridity." As he notes, "if the act of cultural translation denies the essentialism of a prior given origin or originary culture, then we see that all forms of culture are continually in a process of hybridity...hybridity to

me is a 'third space' which enables other positions to emerge."³⁷⁰ The nation-diaspora is therefore both the "third term" and the "third space" in which the nation and the diaspora become hybrid identities; never present outside their representation of the other and therefore always open to transformation from within the trace through which they are reproduced. As he suggests in another text, "What is irremediably estranging in the presence of the hybrid - in the revaluation of the symbol of national authority as the sign of colonial difference - is that the difference of cultures can no longer be identified or evaluated as objects of epistemological or moral contemplation; they are not simply *there* to be seen or appropriated."³⁷¹

Indeed, Bhabha in one place points out that even though the activation of the hyphen allows us to gesture towards the way in which identities are joined together, thus marking the deconstruction of the binary opposition mandated by the metaphysics of centre and periphery, the grammatical figure of the "comma" in fact gestures more directly towards the third space.³⁷² The estranging experience of hybridity, then, is not to be found in binary oppositions, and only partly in hyphenated couplings. Instead, it is found more effectively in the comma which both divides and joins identities. The comma, then, is always a crossing-point and the grammatical site of becoming, so that we might perhaps amend our earlier formulation and deploy the figure of the "diaspora, nation" as a way of representing what we mean by cultural identity.

To return to our earlier discussion of Derrida and the question of the centre, the space of the comma, which is the third space in which hybridity appears, is the place where the process through which the centre is in fact centred can no longer remain unthought. That is to say, Bhabha's identification of a third space in which colonial migrants return to the centre of the imperial structure to provide its immigrant workers shows how the centre is a site which must first be thought from within other possible centres. As we have seen, Derrida refers to this as the moment when we have to think the "structurality of the structure," the process of structuring through which the centre comes

to be represented as a centre. Rather than a simple model of centre and periphery, or host country and homeland in the case of Sheffer and Safran's reading of diaspora, or the homogeneous empty time of Anderson's imagined community, there is instead what Derrida calls "an infinite number of sign substitutions" which come into play when the structure of the centre is thought. In the case of Bhabha, therefore, it is the colonial migrant which must remain unthought if the imperial structure of centre and periphery is to remain in place. In other words, it is the rendering invisible of this identity through the performance of centre/periphery discourse which allows this structure to function, and therefore a centre to be inscribed on what Bhabha identifies as otherwise being the hybrid space of a new transnational culture.

Gayatri Spivak takes up this question, which is still the question of the centre, in her discussion of the subaltern. The focus of Spivak's attention is not the colonial migrant who becomes the unthought margin within the centre, but rather the Third World woman who remains unthought and marginal even as the Third World is centred as the periphery. Even so, what she calls the moment of "double exile" is still powerfully at work in the critical focus of both writers.³⁷³ Where Bhabha's colonial migrant is exiled from his homeland and is also exiled within his host country, Spivak shows that Third World women are exiled within a homeland which itself is exiled by imperialism.³⁷⁴ In exploring this other site of ambivalent decolonisation, Spivak therefore highlights the "cognitive failure" at work in resisting oppression, something which leads the identity of the subaltern to be effaced even as it is disclosed.³⁷⁵ That is to say, because it takes place within the grammar of centre and periphery, the articulation of resistance to colonial (or neo-colonial) domination in the Third World produces a homogenisation of the subaltern. Third World women and colonial migrants therefore become the sites of repudiation which allow the centre/periphery, coloniser/colonised, coercer/coerced, model to operate.

Since such cognitive failure is in one sense the possibility of politicising the political, Spivak's point is not to argue against resistance but instead to try to reframe

how we need to interpret this moment of homogenisation from the point of view of critical agency given that the periphery itself has no pre-discursive structure. In other words, on the one hand, as the one who is oppressed it is "the subaltern" who provides a general model for resistance; but as Spivak points out, "since the "subaltern" cannot appear without the thought of the "elite," the generalisation is incomplete."³⁷⁶ Like the process through which the centre comes to have a centre, the nationalist elite which centres the periphery therefore represents what Spivak, after Derrida, calls the "instituted trace at the origin,"³⁷⁷ which within the logic of the centre/periphery framework substitutes a nationalist elite as a sign of Third World subjectivity for that Third World subject itself as it appears in his or her particularity. As Spivak has more recently suggested, "in this context, "decolonisation" becomes only a convenient and misleading word."³⁷⁸

The point here is that since colonialism is internal to the logic of decolonisation, even as the Third World frees itself from the structure of imperial administration colonisation persists as the condition of its (im)possibility. Therefore, whereas "the event of political independence can be automatically assumed to stand in-between colony and decolonisation as an unexamined good that operates as a reversal," Spivak, looking at the other side of Bhabha's deconstruction of colonialism, interrupts this binary logic by reminding us that "There is however a space that did not share in the energy of this reversal." As she argues, this is "the postcolonial womanspace" which does not share in this reversal because it "had no firmly established traffic with the culture of imperialism."³⁷⁹ Consequently, like the space of the colonial migrant, "this is the space of the displacement of the colonisation-decolonisation reversal."³⁸⁰ Colonisation therefore persists, since in order for decolonisation to take place that which was outside the logic of colonialism must continue to remain outside.

Negotiating this question opens the possibility for understanding what Spivak calls "the subaltern subject-effect."³⁸¹ Instead of a subject which is stabilised in the idea

of Being as self-presence, Spivak suggests that "that which seems to operate as a subject may be part of an immense discontinuous network ("text" in the general sense) of strands that may be termed politics, ideology, economics, history, sexuality, language and so on."³⁸² That is to say, rather than having a centre the subaltern is in fact an effect woven together out of this discontinuous network of strands. As she says, "Different knottings and configurations of these strands...produce the effect of an operating subject." The point here is that because the dominant strand, the vanguard of the nationalist elite, only appears from within the structure of strands in general, it produces a subaltern subject which, although present, is by the grammar of its appearance incomplete.

For Spivak, the critical challenge is therefore to produce an understanding of the subaltern self which does not reproduce the structure of alienation which it itself is attempting to resist. In other words, the question is how to constitute and utilise the enabling logic of the centre/periphery model while acknowledging that in themselves both the centre and the periphery are in fact without a structure. Since every enablement is therefore also a violation, and since every representation of the subaltern leaves something unremarked, Spivak therefore looks at the possibility of using the periphery "strategically." The point here is that if the periphery is essentialised in the context of a continued attempt to keep its coming into presence in view, then subaltern resistance can still take place without the production of an alienated self consciousness. As a result, Spivak suggests that we might read the elite resistance to colonisation which produced the reverse move of decolonisation in terms of "a strategic use of positive essentialism in a scrupulously visible political interest."³⁸³

Multiracial Identity and the Politics of Passing

By way of a conclusion to this chapter, I would like to situate some of the issues which I have discussed above in relation to the politics of racial identity, particularly to

the practice of passing, and to identify some of the political and ethical issues which this raises. This will help to provide a context in which some of the most important points raised in the case study, which focuses on the limits of identifying as multiracial in present day America, can become more readily intelligible. As a practice which has involved those of mixed-race adopting white identity to avoid racial discrimination, passing is historically related both to the rape of black women by white male slave owners and in more recent times to the legally recognised possibility of interracial marriage. In both cases, though, the point is that the racial identity of the offspring is, for example, neither black or white. The motivation to pass is then based upon the fact that America's race laws have traditionally designated anyone with one-thirty-second of black ancestry officially black, regardless of whether their light skin pigmentation or caucasian facial structure makes them appear to others as white. We should also add, however, that in the US mixed-race identity also appears at the intersection of any two officially designated racial categories, and so can include not only races other than black and white but also multiple categories if miscegenation has taken place earlier in a family's history.

Perhaps the most famous example of multiracial identity is the golfer Tiger Woods, who in an interview with Oprah Winfrey pointed out that he thinks of himself as a "Cablinasian," a racial signifier which itself has no centre but which instead refers to the fact that caucasian, black, Indian, and Asian ancestry all mark his identity.³⁸⁴ The point here is not that Woods has no racial identity. Rather it is that the place where that identity is supposed to find its centre is overdetermined by the play of competing centres, and that it does so in a way which makes the official use of monological categories such as white, black, Native American or Asian not merely out of date but more importantly disciplinary when they are given to him by others. Although his apparent attempt to distance himself from black identity has been criticised by the black civil rights movement, who see him as a way of breaking down the white racial dominance in professional golf by encouraging black children to take up the game, Wood's point has

not been that he is not black but that he is not just black. Understanding the tensions within one's racial identity is not the same thing as denying that one is black.

In another less well known but still typical example, Asianweek journalist Emil Guillermo has used his own experience and that of his multiracial children to suggest that "We're getting too big for our boxes."³⁵ As he says, he is Filipino American but he never uses that name. However, taking the more usual approach of calling himself Asian, he argues, still suggests in an American context that he is Chinese. At the same time, though, he points out that "Filipinos are the most multiracial of all Asian Pacific Americans to begin with, comprising Malay, Indian, Spanish, mixed with a touch of Chinese, even some Japanese." As he suggests, "What else would I call myself but an As-Panic!" As an identity consisting of mixed metaphors, Guillermo says that his children are even more difficult to situate. Since he out-married to a midwestern Scotch-Irish-American, he foresees an increasingly extended acronym like "Aspamidscirisham." And in another example Jill Smolowe has also suggested that, "If, say, the daughter of Japanese and Filipino parents marries the son of German and Irish immigrants, together they may beget a Japanese-Filipino-Buddhist-Catholic-American child."³⁶

As I have noted, given that their skin colour and facial structure combine different traits from each parent so as to create a certain undecidability over their racial identity, multiracial individuals are notable because of their ability to pass between the categories of monoracial identity, in effect deconstructing the social and political boundary between the two. In this respect, within the terms of a monoracial culture such as the US racially mixed people gesture towards Homi Bhabha's third space of hybridity which we have discussed throughout this chapter. As such, they can also be described through Hall's notion of diaspora insofar as in many cases they move between the centre and periphery norms of American racial identity, white and black, without having an origin which can finally be reduced to either. As a critical strategy, the subversive potential of passing is therefore to be found in the act of the multiracial person who passes as white, and who

thus reveals the racial differences upon which a dominant culture is organised. In other words, where they pass between colour and white, multiracial people show that there are no authentic racial identities. Rather, passing between shows that these identities only exist within the system of political and cultural values which the distinction between black and white serves.

In this respect, passing can be located within a slightly broader concept which other writers have called "cultural cross-dressing." Passing therefore replicates this practice at the level of racial identity, so that passing between black and white can be said to involve a form of "racial cross-dressing." As bell hooks has suggested, "Cross-dressing, appearing in drag, transvestism, and transsexualism emerge in a context where the notion of subjectivity is challenged, where identity is always perceived as capable of construction, invention, change."³⁸⁷ More than this, though, it also involves a question of power. Recounting a period in her own life when she liked to dress up as a male, hooks suggests that "To cross-dress as a woman in patriarchy - then, more so than now - was also to symbolically cross from the world of the powerless into a world of privilege." Indeed, it has been the question of power, and especially the question of a visibly powerless subject position, which has historically been behind not simply racial cross-dressing but also many interracial marriages. As Purnima Mankekar has pointed out, during the period before the repeal of anti-miscegenation laws Punjabi male migrants to the US married across racial lines but within coloured identity. In particular, they tended to marry Mexican or Mexican-American women. Mankekar argues that these men made "strategic decisions" to "consolidate their precarious positions in local configurations of power."³⁸⁸ In other words, these men used marriage in order to pass or dress across cultural identities in a way which, as Mankekar emphasises, moved them away from their social identification with blacks with whom they rarely inter-married. As this suggests, here the use of marriage was being deployed to try to alter the positions within which

certain subjects come to be identified. Thus, interracial marriage itself can enact a form of passing even before racially mixed people emerge from it.

However, as this suggests, in the context of racial identity cross-dressing raises a series of issues relating to colourism, selling-out, and reinscribing the racial norms of the dominant culture. It is because there is not a "subaltern subject" but rather, as Spivak has suggested, only a "subaltern subject-effect," that the results of racial cross-dressing always produce a set of ambivalent effects, which is to say that they establish their own sites of repudiation even as they enact a radical subversion of existing exclusions. As we have seen, where there is no centre to the subject but only the weaving together of differences, the centre itself becomes the site where a number of passing maneuvers are put into play. Therefore, the act of multiracial people passing as white is always already involved in debates over colourism where these focus on the suggestion that people of colour who are less phenotypically black attempt to escape into the advantages of white society. In other words, even as racially mixed people perform the subversion of a monolithic white identity, they reinscribe the boundary between black and white by repudiating their black identity, thus fueling a highly charged debate over colourism between the black civil rights movement and multiracial advocacy groups.

As we shall see in the case study, this focuses on the significance for racial identity of the one-drop rule and in particular the interpretive spin which each group gives to that term. In general terms, the black civil rights movement have argued that the demand by multiracial groups for a separate multiracial category on the census has implications for the structure of affirmative action programmes which need to be set against the role of the civil rights movement in providing the political opportunities within which multiracial people can now attempt to further extend the boundaries of recognised racial identity. Thus, they have argued that solidarity between peoples of colour is as important now as it has ever been and that the "defection" of many multiracials from black identity would make the existing situation, in which courts are

favouring colour-blind interpretations of equal protection, even worse. In other words, the issues which are raised here are alive with those questions of responsibility and strategy which we have been discussing, and which highlight the importance of a critical sensitivity for the location from which the tactic of passing and the criticism of this are made.

However, we also need to be aware that when it is undertaken from a privileged site of difference any form of self-representation will institute an act of passing, this time involuntarily, by appropriating the play of differences in the structure of subjectivity at its point of enunciation. In other words, it is because the victim never finally gets to speak in the sense that the subaltern is constantly being reproduced across different sites of repudiation that passing is both a violent appropriation *and* a strategy of critical resistance. In this respect, the argument of many multiracial groups is that multiracial individuals find themselves forced to pass by the larger grammars of the already culturally accepted and legally authorised racial representation within which their identity is caught up. So, for example, when an act of political resistance requires the representation of a coherent identity, the homogenisation of racially mixed people within, say, black or Asian identity, as in the case of the Los Angeles riots, erases them in the same way that Spivak suggests that the postcolonial womanspace was erased under both colonisation *and* decolonisation. For multiracial groups, this is apparent in the way in which the black civil rights movement has appeared to reverse the specific meaning of the one-drop in order to argue that despite their claims to a distinct racial identity multiracial individuals can only be black. It is thus within the context of black resistance to white oppression that black identity takes on the appearance of a subaltern subject-effect and multiracial identity becomes a kind of post-colonial womanspace.

However, we also need to be aware that the resistance of multiracial identity to their repudiation within black identity silently reinscribes a sexual exclusion because of the cultural and legal norms which censor the terms within which the right to speak in the

American public sphere is established. That is to say, their resistance to the repudiation of their racial difference within black identity is predicted upon their acceptance of a heterosexual norm as a condition for any speakable discourse on identity in American culture and law, at least for any identity which seeks to speak to the centre of American identity in a register of equivalence and with a request for inclusion. In this respect, heterosexual identity becomes one of the "thresholds of tolerance" with which other thresholds such as white racial identity intersect to give that American identity the effect of a centre and a standard of humanity. Consequently, when multiracial groups speak in the name of "multiracial Americans," multiracial individuals of homosexual or bisexual identity are themselves forced to pass by the heterosexual grammar within which the debate over racial identity is constructed; that is, by the particular location from which resistance is permitted to speak.

Depending on the location of the one who speaks as the subaltern, and crucially whether the subaltern ever gets to speak, passing can therefore be a subversive practice which deconstructs essentialised differences or it can be a practice which puts those differences in place. In other words, because it involves representation and therefore the aggregation of differences it can operate as a principle of both inclusion and exclusion. In fact, since all identities are actually overdetermined intersections of multiple subject positions, it will effect both possibilities at the same time. It is because of this doubling at the location of resistance - this folding back of critical agency upon itself - that the subaltern therefore never finally gets to speak, since the positive aggregation of any subaltern identity is irreducibly connected to the negative repudiation of other subject positions. In the context of the LA riots for example, the grammar through which resistance was represented, black versus Asian, forced those subject positions based upon ethnicity, gender, sexuality, class, age, and of course mixed race to pass at the level of their racial difference. As Ang notes, during these riots her Chinese uncle who lives in LA felt threatened because the "general fact of yellowness" and "those famous slanted

eyes" meant that he might be mistaken for a Korean.³⁸⁹ This is, of course, an issue which is endemic in pluralist society, where the principle of "cultural diversity" encourages the multiplication of differences.

To identify an ethic within the tension between resistance and repudiation which can serve as the basis for a less violent moment of critical agency obliges us to turn to the critical possibilities opened up by Spivak's understanding of strategic essentialism, for as we have seen deploying a positive essentialism in a context which recognises a visibly contingent political identity allows us to continue to construct and deploy differences without disabling the subversive possibilities of passing. In other words, undertaken with a self-conscious understanding of the tension between resistance and repudiation, passing can be looked upon as an act of strategic essentialism. As a point of critical intervention into liberal concepts of justice, I would suggest that it is the intention with which the act of passing is undertaken, which should always be the intention to recover or keep in play the hybridity of the third space, which becomes our (measureless) measure of ethical conduct. I believe that this formulation of the ethical is critically significant because it respects the tension within both the intentionalist and consequentialist theories of justice found in liberalism (Kant and Max Weber would be my examples of each) and attempts to move beyond both without in fact transcending either. That is to say, it offers an imperative whose intention reflects the fact that any form of political action will have consequences which can never finally be determined, and in so doing wills a set of consequences from that action which reflects the fact that there is never a single categorical imperative to orientate our intentions.

Thus, intending to keep in play that third space of identity where resistance and repudiation intersect becomes necessary once we realise that, as I have suggested, the subaltern never finally gets to speak. The point here is that it is because the subaltern does not get to speak that the measure of ethical conduct is always measureless: it cannot be measured either through a single, universal intention or through a contextually

constructed ethic of consequences. What we therefore respond to is the realisation that the repudiations which structure every situation of resistance present us with ethical imperatives which point beyond any single standard precisely because the consequences which follow from acting in that situation can never be totalised. Another way of putting this would be to say that our commitment to always recover the third space would reflect the fact that although we must respond to the subaltern who cannot speak we must do so without perpetrating the indignity of speaking for him or her. It is because of this that our categories of moral person therefore always have to be strategic rather than either transcendental or phenomenological. That is, they must be committed to always reconstituting the aporia between resistance and repudiation which appears in all moments of critical agency, including our own.

Spivak does not formulate the ethical issues involved in quite this way, but she does make the following suggestion which applies very well to what I have said here: "If one is considering strategy, one has to look at where the group - the person, the persons, or the movement - is situated when one makes claims for or against essentialism. A strategy suits the situation; a strategy is not a theory....One has to be careful to see that they do not misfire for people who do not resemble us..."³⁹⁰ In this respect, I am tempted to suggest that the ambiguous doubling which comes into play when there is no fixed or unitary site from which the strategy of passing is undertaken requires us to expand our understanding of justice away from the monological categories of cultural identity which are deployed by conventional theories of group rights and instead attempt to approach this question from within a Derridean reading of the phrase "nothing is authentic."

CHAPTER EIGHT

INTERSECTIONALITY: GROUP IDENTITY AND THE LIMITS OF LIBERAL THEORY

In this chapter I attempt to explore the implications which the discussion of cultural identity and difference in the last chapter has for liberal political theory. As I suggested in my introductory comments, this appears on two related levels: the process through which identity is represented, which raises the question of whether there are actually any authentic cultural identities or any way of distinguishing minority from dominant cultures, and, secondly, the question which appears within this about the possibility of representing the subaltern subject or victim. For if the distinctions which allow cultural identities to be represented are involved in an endless process of repudiating difference, then it seems fair to argue that the victim never finally gets to speak. As I have suggested, these concerns are particularly significant for the attempt by liberal writers to address the question of group rights, where the attempt to decide which minority groups are entitled to political toleration has rested on the assumed ability to make just those distinctions between authentic and inauthentic and dominant and minority cultural identities which have now been rendered problematic.

An important point here, in addition, is that in exploring these issues we can begin to see their connection to concerns raised by other critics more closely associated with liberal theory. Thus, where the complex process of substitution and displacement surrounding the attempt to represent the subaltern suggests that the identity of the oppressor remains internal to any attempt to represent the victim, the political significance of this is played out in the work of black feminists such as Angela Harris and Kimberle Williams Crenshaw and radical multiculturalists such as Zillah Eisenstein who

have argued that differences of race and gender remain repressed within the attempt to represent the identity "woman" or "racial minority" as a subject of political rights. In other words, the subaltern subject-effect is at work here in that even within a white male dominated society those represented in the name woman and racial minority can never be just the victim.

In broader terms, these concerns about cultural identity and difference are also reflected in the work of William Connolly, Slavoj Žižek, and Gassan Hage. As Connolly points out, because an apparently universal signifier like equality turns out to be based only on a particular cultural inscription, toleration can never reflect more than a repressed desire to either conquer or convert the other. That is to say, when a moral discourse claims universalism but can only be given substance through a particular cultural experience, then toleration is never more than a pragmatic response to the contradictory finitude of that culture's own values. Žižek describes this tension in terms of liberalism's relationship to the "totalitarian temptation." Where Connolly takes his example from the European conquest of America, Žižek highlights the national situatedness of all democratic structures. As Hage points out, the ability to tolerate is itself based upon the possibility of being intolerant, something which is never taken away in toleration. In other words, what these writers point towards is the fact that when the oppressor continues to work within the identity of the victim, intolerance persists within each site of toleration, and perhaps more importantly that injustice continues to be at work within identities even (or especially) when they are granted equal representation.

This allows us to critically rethink the appropriateness and consequences of political rights as these have traditionally been presented in liberal theory. On the one hand, it suggests that the attempt by contractual theorists like John Rawls to pursue social justice by presuming that it is possible to imagine ourselves as just the victim is profoundly misleading. It is because the attempt to represent the victim only takes place through a further repudiation that the type of original position which Rawls requires to

operationalise his notion of justice is not merely impractical, but is itself bound up in the metaphysical enactment of discipline and violence described by writers like Foucault and Derrida. On the other hand, it suggests that the attempt to decide which minority cultures are entitled to toleration is equally problematic. Such attempts as those made by Charles Taylor and Iris Marion Young rely on just those distinctions between authentic and inauthentic and dominant and minority cultures which the post-colonial understanding of travel, diaspora, and hybridity rendered inadequate.

As I have suggested, it is here that Gayatri Spivak's use of the phrase "strategic essentialism" allows for the appearance of Derrida's ethical concerns within the ontological presumptions of liberalism (which is in fact the presumption of ontology). That is to say, because it reflects Derrida's concerns about the radically incommensurable parameters of equality as an ethical discourse, Spivak's notion of strategic essentialism allows us to avoid our own essentialising (and therefore ontological) condemnation of liberal approaches to identity, and instead to see them as contingent and localised constructs which, rather than being deployed foundationally, can instead be used as aggregations undertaken in the context of a broader understanding of the ethical issues facing a finite identity - that is, an identity that must be re-presented through the repudiation of difference. Thus, when Taylor or Young make cultural toleration conditional on a minority representing itself as an authentic identity, it is the localised and strategic values of being seen as authentic by one's oppressor rather than one's authenticity *as such* which becomes crucial. A minority which is responsive to its own repudiations will see the strategic necessity but not the possibility of such authenticity. Such an ethical approach to the demand for equal recognition seems to gesture at something of what Heidegger meant by "resoluteness" in his analysis of Dasein's way of Being as always already Being-guilty in its relationship to the "there" of its Being-there, a point which returns in Derrida's notion of duty as an "over-duty."³⁹¹

I begin this chapter, therefore, with a critical reading of liberal concepts of equality, tolerance, and oppression. In the course of this I introduce the examples of gender and race as group identities and explore the issue of the ambivalent operation of critical agency which is at work within them. It is because these identities are resistant to what Derrida calls "closure," which is to say that because they lack a centre a priori and are therefore unrepresentable outside of what they repudiate from within the field of identifications which circulate around each term, we find that injustice, intolerance, and victimisation are at work in gender and racial identity even as names like "woman," "black," or "Asian" are made the site of group rights. This is not, of course, an analysis which should be read as support for the neoconservative reaction to affirmative action, group rights, and multiculturalism. Rather, it is intended to historicise some of liberalism's basic assumptions within a more critical analysis of the modern exercise of power as discipline, the grammatical rather than ontological structure of identity, and the political effects of metaphysics. In the course of this I make frequent references back to the previous chapter to point out where critical openings made by both discourses overlap. The overall objective remains, of course, to explore more critically the question of group identity and group rights.

In his discussion of the issues raised by Todorov's text The Conquest of America, William Connolly explores how a singular understanding of equality informed Europe's first encounter with the Americas. That is to say, he shows how the idea of a single god served as a cultural norm around which the European interpretation of equality was universalised. As Connolly notes, "Christianity posits a single god and enjoins a universalist religion applicable to human beings equally. It thus stands permanently above any religion positing multiple gods and claiming the allegiance of a select people."³⁹² As Connolly's analysis makes clear, in the conquest of America Christianity's appropriation of the signifier "equality" was central both to the way in which the Europeans understood themselves and to the way in which the other of the Americas was

represented. As Connolly points out, Christianity thereby "creates its external others as pagans, savages, primitives, innocents, or barbarians since they spurn the totalised image of the single god."³⁹³ The idea of a single god thus served as the basis for equality and so for the conquistadors' understanding of the terms of cultural toleration.

In his reading, Connolly suggests that the Christian response to the other whose cultural practices are absolutely different have focused either on conquest or conversion. Any attempt to wander outside this field, he suggests, leads one to question too seriously the stability of the ground beneath one's own identity, which in this case would be to question the contradictory relationship between the cultural singularity of Christianity's view of equality on the one hand, and the universalist injunction which it puts out to treat others as moral equals on the other. In this context, which is the context faced by any attempt to totalise authority through an act of self-representation, toleration can be nothing more than a tactical response to an ethical aporia. Here one's relation to the other remains circumscribed by the options one would rather follow (conquering or converting) but which are precluded by the contradiction between singularity and universalism at work in one's own position. Thus, as Connolly puts it, "Toleration becomes forbearance toward cultural practices thought to be intrinsically wrong or inferior."³⁹⁴ At best, Connolly suggests, toleration is seen as a detour on the way to conversion, where the other's position is "thought to contain a glimmer of truth that might evolve, with proper prodding, into realisation of Christian truth."³⁹⁵ Presumably, at its worst toleration is also seen as a temporary postponement of the opportunity to conquer as well.

Toleration therefore gestures towards both the enigma of the other - his place within our universalism but outside our singularity - which reveals the politics of location behind our own position, and our desire to totalise this location either by conquering or converting him. As a response to the other, tolerance therefore marks the paradox between the claim to universalism represented by equality and the culturally specific site from which the content of this universal is sent out. The point here, of course, is that

tolerance is unable to escape its relationship to intolerance because equality is articulated from the site of a cultural singularity. In terms of our earlier discussion of the subject and the law, this means that there is nothing before the law in which the terms of equal protection are inscribed. As the conquest of America shows, toleration is therefore what Derrida would call a "dangerous supplement" which is used to secure an identity inscribed with the originary finitude of difference.

The same tensions are also explored by Slavoj Žižek in his discussion of the principle of formal democracy. Where Connolly shows how the Christian understanding of equality is in fact mediated by the cultural norm of a single god, Žižek shows how the secular version spawned by this, formal democracy, is unable to escape its representation through cultural images of the nation. As with the subject of equality, which as Connolly shows is unrepresentable outside of Christianity's projection of a single god, Žižek shows that in itself the subject of formal democracy proposes "a pure singularity, emptied of all content, freed from all substantial ties,"³⁹⁶ which is therefore "an entity strictly correlative of the Cartesian ego as a point of pure, nonsubstantial subjectivity."³⁹⁷ As Žižek points out, every democratic constitution prefaces itself with a proclamatory reference to "all people without regard to (race, sex, religion, wealth, social status)".

His point, which we have seen already in Connolly's account of the conquistadors as well as in Derrida's reading of the US Declaration of Independence, is that the attempt to represent the substantive character of formal democracy, the possibility of a material identification, gives way to what Žižek calls "the totalitarian temptation." This is because the very possibility of abstracting the subject into the discourse of formal democracy relies upon a prior moment of positivity which then returns to provide this formal discourse with its concrete content. This positive moment or unrepresentable surplus is the cultural singularity of the nation. As Žižek notes, "Here we have again an exemplary case of the Lacanian logic of not-all where the universal function is founded upon an

exception: the ideal leveling of all social differences...the subject of democracy, is possible only through an allegiance to some particular national Cause."³⁹⁸

As a result, instead of being a pure universal, "democracy" comes to be enjoyed through the projection of national myths, and what constitutes the basis for racial conflict is the way in which the other's organisation of his own enjoyment, his own fantasy space built around food, manners, language and attitude to work, threatens the space of our fantasy of nationhood. As a result, Žižek argues that "'Pure' democracy is not impossible because of some empirical inertia...rather, democracy is possible only on the basis of its own impossibility; its limit, the irreducible "pathological" remainder, is its positive condition."³⁹⁹ As such, the other signifies the moment of what we might call "intolerant positivity" upon which the so-called toleration which characterises formal democracy is based: the nation which gives democracy its concrete content but also manifests its totalitarian temptation.

As this suggests, any culture, secular or religious, which identifies its claim to authority in an apparently universal imperative, such as equality or democracy, is in fact founded upon a singular cultural subject whose political way of Being is marked by a sense that it is always already becoming-intolerant. It is in this respect, then, as Connolly and Žižek both infer, that notions such as equality and democracy are better understood as contestable cultural signifiers whose meanings are appropriated by, and put to work as, practices intended to master the play of otherness around the image of a dominant cultural identity. In Connolly's example this was the image of a single god which organised Christian self-identity, whereas for Žižek this was, by implication, the image of a liberal culture based around the fantasy of the national self.

As this suggests, the most important but yet unremarked feature of toleration is the ability and assumed right of the tolerator to be intolerant if he so desires. As Ghassan Hage suggests in his critique of practical (in)tolerance, "There is something intolerable about the concept of 'tolerance'. For if one concedes or promotes a power to tolerate, one

equally concedes a power not to tolerate."⁴⁰⁰ As this suggests, rather than provide for equality, toleration instead signifies the codification of a structure of domination, one which suggests that intolerance is actually internal rather than external to the logic of tolerance. As Hage puts this, "the very existence and social relevance of a discourse of tolerance implies the continuing presence of dominant and subjugated cultural/political formations."⁴⁰¹ The point here is that, as a concept organised around the grammar of metaphysics, tolerance fails to grasp the discourse of power at work in its signifying structure. As Hage also notes, "When those who are intolerant are asked to be tolerant, their power to be intolerant is not taken away from them, they are simply requested not to exercise it....It is this 'power' dimension that has been continuously mystified by liberal writing on tolerance exemplified by Locke and Voltaire's classic texts."⁴⁰²

As Hage points out, Locke's concept of "mutual tolerance" implies the rather absurd situation of a relationship between tolerators without any tolerated. As I will suggest later, it is this approach to toleration which informs more recent attempts by liberal theories to arrive at a non-sacrificial notion of justice. Here, deliberative frameworks such as that offered by John Rawls in his image of an "original position," rely for their authority on the presupposition that we are all somehow *just* victims. In other words, it is only through the assumption that there are no ambivalent intersections of identification, so that self-representation does not require self-repudiation, that a liberal concept of tolerance such as that offered by Locke becomes possible. Ultimately, it is the false assumption that the subaltern does finally get to speak - that we can finally reach an original position for the subject - which allows liberals to advance the idea of mutual toleration. (To paraphrase Connolly, in any other circumstance they would rather be conquistadors: either through an act of conquest or conversion.)

Thus, it is the fact that the subaltern never finally gets to speak which helps us to understand the importance of Hage's argument that toleration is actually a power relation because it incorporates the power to be intolerant. In this respect, the practice of

toleration can be seen as an active process through which the hierarchical relationships between cultural identities are reproduced. As Connolly's work suggests, toleration is a strategy adopted by the oppressor once he realises that the other represents a presence which is internal to the logic of its own rhetoric yet incompatible with the singularity upon which its content is based. In other words, the simple presence of the other as a trace is enough to change the available strategies away from intolerance and towards toleration. As Hage argues, tolerance then becomes an active practice of "positioning" the other. The other, then, never merely "exists" as a cultural minority; rather this identity through which it is positioned in subordination to the dominant culture marks out a space in which it is "allowed" to exist.

Of course, because liberalism supposes that we are all just victims it simply reads tolerance as "a suspension of action rather than an action in itself." However, as Hage argues, the discourse of "acceptance" is itself an active practice of positioning. As he notes, "Acceptance translates into doubt...[so that] the very act of acceptance operates as an exclusionary force on the accepted...if *it goes without saying* that the migrant is Australian there would be no need to say it."⁴⁰³ As we have seen, the effects of acceptance appear in those identifications which must be repudiated if equal protection is to be extended to new political identities. Toleration therefore marks out a twilight zone where cultural minorities are "made-present" through the power of a dominant culture to censor the terms of political inclusion. In this respect, the act of toleration in fact suggests that dominant cultures are themselves a minority which can only be represented as dominant by transgressing the right of the other to simply be other. Thus, tolerance carries a performative force insofar as it involves the inscription of a limit for which there are no prior grounds. It is because of this force that it is therefore inseparable from intolerance.

As I will argue later, marking out this "threshold of toleration" is part of the practice through which the other is "governed" in Foucault's sense of this term.⁴⁰⁴ As we

have seen, this view of toleration as a form of government is already indicated in Connolly's distinction between conquest or conversion and toleration. As Hage suggests, "while tolerant racism is the racism of the government of Otherness, intolerant racism is the racism of the conquest of this Otherness."⁴⁰⁵ Toleration therefore becomes a strategy of governmentality because, as its representational logic implies, the framework within which it is possible to be intolerant is already at work. As Lyotard has noted, "Today, hatred comes softly as an integration of "the jews" into a permissive collectivity in the name of the "respect for differences."⁴⁰⁶

It is, therefore, their failure to acknowledge the way in which tolerance is deployed to legitimate intolerance and injustice which marks the major democratic deficit in liberal political theory. In other words, the threshold of toleration is the very thing which is decided as political theorists make their basic ontological claims. Thus, in the case of radical feminism, it is the claim that the name "woman" marks a point of Archimedean neutrality which in fact marks the threshold of toleration where the limits of that name are decided, and where we start to see where injustice, intolerance and oppression are always already at work in liberal theories of group rights. In this respect, we can see where feminist theory pursues the same practice of exclusion which it opposes in contractual theories of liberalism.

For example, as Angela Harris has argued, while radical feminists such as Robin West criticise the gendered presumptions which code Kantian-based accounts of the autonomous human subject, this same "separation thesis" is reproduced in the way their counter discourse of the "essential woman" brackets-off issues of race, thus silently installing whiteness as the marker for woman's identity.⁴⁰⁷ As Harris argues, although black women should not be taken as a privileged site of deconstruction, the experience of black women is one which we might say "gestures strongly" towards a multiple and contradictory rather than a unitary self.⁴⁰⁸ As she suggests, the answer to the question of how it feels to be coloured depends upon who is asking the question. Consequently,

"questions of difference and identity are always functions of a specific interlocutory situation."⁴⁰⁹

As such, black women reveal that the woman which is coded in the opposition male/female is one whose racial identity is overcoded by the constraints of a gender. In this way, they offer a closer insight into some of the issues surrounding Rawls' notion of the original position, and the implications of its use as a strategy for the pursuit of justice. As is commonly known, Rawls' employs the idea of a hypothetical contract made by persons under what he calls a "veil of ignorance." The main purpose of this construct is to inform these persons of who they might be in a society which they are about to found without informing them of who they will be.⁴¹⁰ Thus, the original position is intended to provide an institutional structure in which individuals can arrive at the minimum criteria for justice which does not interfere with their rights as free persons. As Ronald Dworkin has suggested in his interpretation of Rawls' theory, "justice as fairness rests upon the assumption of a natural right of all men and women to equality of concern and respect, a right they possess not only by virtue of birth or characteristics or merit or excellence but simply as human beings with the capacity to make plans and give justice."⁴¹¹ However, as the relationship between black women and feminism reveals, there is an inherent tension in the relationship between the idea of an original position (that men and women are simply human beings) and the possibility of justice. Thus, in the same way that Dworkin indirectly shows that gender is invisible in the self which is constructed in Rawls' original position, so race is invisible when radical feminism constructs female identity in opposition to these gender exclusions.

As I have indicated, what this suggests is that in Rawls' theory the achievement justice as a procedural fairness relies upon the assumption that all subjects deciding in the original position can look at themselves legitimately as just the victim.⁴¹² The result of this is that, like the original position, in radical feminism women have to exclude knowledge of racial difference from their interpretation of justice as fairness. As Harris

notes, in the case of feminism and feminist legal theory, the "story of woman as victim is meant to encourage solidarity by emphasising women's shared oppression, thus denying or minimising difference, and to further the notion of an essential woman - she who is victimised."⁴¹³ In other words, since it is designed to achieve a level of solidarity the veil of ignorance in fact functions as a veil of oppression.

Therefore, as the intersection of race across gender identity suggests, the status of the victim is a far more complex relationship of both victimisation and oppression, one where the very fact of having to "re-present" the victim ensures that it never finally gets to speak - a conclusion which Gayatri Spivak reaches in her own inquiry into the question of "Can the Subaltern Speak?"⁴¹⁴ Vron Ware makes the same point when she notes that there are an almost endless number of hierarchical distinctions in Western thought, which when set within the vectors of gender, race, and class often produce contradictory effects around the subject which is represented. For Ware, it is the identity of "white woman" which is especially prone to multiple mediations. As she notes, "In some contexts, white women might indeed be associated with the idea that female nature is inherently uncivilised, primitive when compared to men, and lacking in self-control. [However,] In the context of imperialism or modern racism, the dominant ideology would place white women firmly in the civilised camp, in opposition to non-European women whose lack of social and political rights are to be read as a mark of cultural savagery."⁴¹⁵ Where we have seen Lata Mani describe this in terms of the "multiple mediations" which make identity a "temporality of struggle,"⁴¹⁶ Susan Ruddick has also described this as the relationship between intersecting and interlocking systems, where the identities of gender, race and class intersect within individuals and interlock between them. As she notes, "[T]hese categories are mutually transformative, and intersecting, each altering the experience of the other." Thus, Ruddick argues that "The social construction of the category "woman" varies across cultural, race, and class boundaries."⁴¹⁷

The point here is that the decision which is made in the original position is neither neutral or made from ignorance because the position from which it is made is never original and never outside of resistance to the exercise of power. In this respect, it is the position from which the decision is made which decides the origin. Thus, (un)like the subject created by Rawls' theory of justice, the identity "woman" is fair not because of any hypothetical veil which women adopt but rather because of the privileged site of difference within which it is made present. In other words, when it is situated within the understanding that identities are produced through the power which inheres in the ability to exercise knowledge, the name "woman" only represents justice when it is located within a structure defined by male oppression. That is to say, it is only through the hierarchy of this grammar, and not through an original ontology, that women who otherwise occupy diverse subject positions ranging across race, sexuality, age, physical (dis)ability, or economic (in)dependence become conscious that "woman" is a subject position which defines the parameters of their political identity. This is not to say that such a consciousness is unimportant. Indeed, as what Spivak calls "the strategic use of a positive essentialism" it can make for a highly appropriate political practice. Spivak's point, however, is that such a use of essentialism can only have positive effects if it recognises the singular example upon which it is constructed.

Thus, to return to my discussion of the role of the victim in authorising a claim for justice, the experience of black women suggests that because female identity is not original, does not originate in gender alone, the name "woman" does not merely mark out a space in which all women resist oppression, or more precisely are "just victims." Rather, as the overcoding of racial difference within this moment of gender sameness suggests, the name "woman" stands for the identity of the oppressor at the same time as it signifies the identity of the victim. That is to say, the name "woman" is not merely an "unmarked signifier" which transcends the semiotic coupling of male/female. Instead, this opposition serves to code female identity in terms of the dominant signifiers of male

identity. As a result, the "woman" identified in the discourse of radical feminism is inevitably white. Therefore, rather than being unmarked, the name woman is irreducibly doubled: lacking any substantive content before its representation in structures of difference, these differences mark out both resistance and repudiation simultaneously. Thus, the name "woman" works to repudiate black women just as it resists the victimisation which is represented in its opposition to the name "man."

In this sense, we have a situation where the word "woman" provides an example of the limits of psychoanalysis which we discussed in part one. That is to say, as we found with the phrase "nothing is repressed," there is no one reading of the word "woman" which is phallic. Instead, because it intersects with questions such as race it is an overdetermined site in which the threat and anxiety of castration are both in play. Thus, in the example above we find that while "woman" is a cause of castration anxiety for male subjectivity, because it is based upon the particularity of white women it also experiences the threat of castration from black females. The point here, contrary to the psychoanalytic diagnosis of the oedipal crisis, is that the phallus will be both gendered and racial, thus confirming the need to shift our understanding of subjectivity from the restricted to the generalised account of negativity which we explored in part one. Within this, the fact that the phallus - the signifier of authority - is marked by cross-identifications means that the law which produces the subject is never finally positive or negative. In the context of the indeterminate relationship between the victim and the oppressor, this means that the threat of castration never escapes the moment of liberation. Thus, feminist attempts to overcome male domination castrate black women racially through the essentialising gender of the male/female struggle.

Given that race and racial identity have been used to critically analyse the privileging of gender in feminist theory, the most engaged way of approaching multiculturalism is to see it in terms of the problems of feminist essentialism only in reverse. Just as we have seen that within radical feminism the basis of critical agency is

an internal privileging of white racial difference, so one of the limitations of radical multiculturalism is that it privileges a male gender difference as a point of resistance to racial discrimination. Therefore, on the one hand, radical multiculturalism, one which focuses on the need to have differences of colour recognised as being of equal worth, provides for a productive moment of resistance in that it opposes the white racial norm which organises the integrationist ideal of liberal multiculturalism. However, at the same time it also provides for a negative moment of repudiation insofar as it reinforces homogenisation by aggregating gender differences within concerns about racial discrimination.

As Zillah Eisenstein has argued, "By leaving sexual and gender borders in place, multiculturalism becomes a form of assimilationism: black history told in its masculinist form reproduces inaccurate gendered histories of black women and their place in nation building."⁴¹⁸ The point here, as we found by viewing gender from the perspective of race, is that the name "woman" is interwoven through its racial, gender, and also, though we have not focused on it here, sexual orientation and class experience. Eisenstein therefore supports the argument that the problem with radical multiculturalism is that even though it challenges whiteness as a privileged centre of racial identity, it continues to follow a monological reading of subjectivity. As she puts it, it leaves "monoviewing" in place in relation to sex/gender diversity. Consequently, as I have suggested women are homogenised as being white while the gender dimension to the identity of women of colour is displaced into the question of racial difference.⁴¹⁹ As Eisenstein argues, "Gender is repressed, fictionalised as absent. By default gender is equated with whiteness, and whiteness is homogenised as middle class, while women of colour are homogenised into their "other" identities as black, latino, korean, etc."⁴²⁰

In this respect, while films such as Chan Is Missing by director Wayne Wang illustrate the play of racial identity within the name Asian-American - which he does by taking the character of Chan Ho whose unrepresentability organises the film's narrative

into a search for Asian-American identity, one which concludes with the view that it largely depends on the position of who is representing it - it also fails to explore the gender dimension of this identity by making both this central, though absent, character and the two subjects who search for him all male. Therefore, on the one hand in Chan Is Missing we see that the name "Asian-American" is in fact less a biological or a geographical than a political designation. As Peter Feng has suggested in his reading of this film, to identify with the name Asian-American is to "accept an externally imposed label that is meant to define us by distinguishing us from other Americans on the basis of race rather than culture,"⁴²¹ but one whose effects can, nevertheless, never be finally determined. In this respect, Feng draws attention to the hyphen which, as we have already seen in the work of Stuart Hall and Homi Bhabha, is the space of an essentially unstable third term, which in this case is neither Asian or American but which deploys traces of both to constitute a hybrid identity which can challenge and exploit the official naming practices of a dominant culture even while it appears to act as their purveyor. As Feng points out, to accept the name Asian-American thus opens the space for resisting closure just as it produces further closures at the level of more localised differences.

As a radical response to liberal multiculturalism, films like Chan Is Missing therefore highlight the necessarily strategic nature of group identity. As Feng puts it, "The presence/absence of the hyphen underscores the need to stabilise momentarily a position from which to speak and to destabilise that position immediately."⁴²² Recognising, I think, that the name Asian-American contains intolerance even as it provides a platform from which to achieve toleration, Feng therefore maintains that it is necessary to understand the difference between the site from which the name is produced and the uses to which it might be put. This comes when the place of the hyphen is brought into thinking. For as Feng points out, the hyphen does have to be thought, otherwise the cultural differences between Asians and Americans are lost in the silent effacement of the hyphen at the moment of enunciation. As Feng suggests, quoting Maxine Hong

Kingston's character Wittman Ah Sing, "'Chinese hyphen American" sounds exactly the same as "Chinese no hyphen American." No revolution takes place in the mouth or in the ear."⁴²³ Bringing the hyphen into thinking therefore opens the way to a multiculturalism which does not situate diverse racial identities around a white assimilatory ideal.

Such an ideal has been particularly influential in the scripting of Asian-Americans in American political culture. Here the thesis of the "model minority" highlights the irreducibly doubled nature of this name.⁴²⁴ On the one hand, it serves to advance Asian-American identity, yet on the other hand, it is deployed by a white hegemonic culture in order to reinforce the values of that culture and the boundaries of racial exclusion through which they are secured. As David Palumbo-Liu has suggested in his reading of the media coverage of the Los Angeles riots, rather than through its own merits, one of the ways in which white racial identity maintains its ideal image is through its ability to manipulate the boundaries of Asian-American subjectivity in order to maintain the racial exclusion of blacks from American identity.⁴²⁵

As Palumbo-Liu shows, in press reports of the riots the inscription of white American values such as private enterprise, individual initiative, and hard work on the bodies of Korean Americans served to reinforce those values and oppose them to the values of African Americans, just as it left white America outside the conflict itself. Indeed, as Palumbo-Liu shows, the Korean as cowboy image has become an important theme through which America's racial boundaries are reiterated. That is to say, through the cowboy metaphor America's racial boundaries are enlarged to include Asian-Americans within the white ideal in order to reinscribe the more fundamental opposition between white and black America. To this end, while films like Chan Is Missing show that Asian-American identity lacks a centre, David Palumbo-Liu's analysis of the representation of cultural minorities in the mainstream American press reveals that a dominant cultural identity like white America can only be maintained by adopting strategies of representation which appropriate the bodies of minority cultures like Asian

Americans since this allows more fundamental sites of otherness to remain excluded. In this respect, he also helps us to see that the practice of cultural toleration is not simply a strategy for policing the other. Rather, he shows us that toleration is perhaps better understood through Spivak's reading of tokenism, whereby the dominant culture admits a small part of the cultural margin in order to reiterate the basic terms of marginality itself. I take up this point in the next chapter as a response to the way in which Charles Taylor frames his account of the politics of recognition on an unreflective distinction between dominant and minority cultures. I then continue my attempt to repoliticise this distinction in the case study.

Within this, and to return to Eisenstein's critical intervention, it is when we start to explore the intersection of race with other subject positions such as gender or sexual orientation that the need to go beyond simply understanding the appropriation of racial identity by dominant cultures becomes apparent. As the work of Lisa Lowe shows, Asian-Americans are marked by more than just their racial difference. Even if this has been their most politically enabling fiction, it is also politically disabling at other levels of Asian-American subjectivity. Thus, although she agrees that being named in racial terms can be used as a point of resistance for Asian-American identity, Lowe adds that "An Asian American subject is never purely and exclusively ethnic, for that subject is always of a particular class, gender, and sexual preference, and may therefore feel responsible to movements that are organised around these other designations."⁴²⁶

Rather than focusing on Chan Is Missing as a site from which to organise our reading of Asian American group identity, one of Wayne Wang's other films, The Joy Luck Club, provides a vehicle in which both gender and generational subjectivity are more fully accounted for. As Lowe suggests, The Joy Luck Club "deviates from the figuration of Asian American identity in a masculine Oedipal dilemma by refiguring it in terms of mothers and daughters...[and thus] multiplies the sites of cultural conflict, positing a number of struggles - familial and extrafamilial - as well as resolutions,

without privileging the singularity or centrality of one."⁴²⁷ Thus, to take one scene, where American born Waverly Jong treats her mother, Chinese born Lindo, to a day at an expensive beauty parlor, we find that it serves as a focus for one of the cultural conflicts explored in the film to reach a climax, since Lindo receives this as an insult, interpreting it as a sign that the daughter is ashamed of her mother's looks. As Lowe points out, this scene explores a number of sites of Asian American group identity such as generation, class, and culture.

The point here is that it is the compounding of miscommunication which takes place at the crossing point of intersecting subject positions which raises the most crucial questions about the use of group identity as a way of pursuing justice in liberal rights theory. This is because, as we have seen here in the case of both gender and racial designations, group identity is never founded on one exclusive moment of difference, such as race, but rather is, as Derrida would put it, "always already" bound up with differences of gender, age, class, or sexual orientation, to mention only a few. It is therefore because the centre of any group only appears at this intersection of multiple differences that the identity of the group itself is from its first moment reproduced. Thus, what we encountered with the subaltern subject-effect reappears here in the question of group identity. Just as the subaltern turns out to be involved in its own acts of oppression, so the identity Asian American is also both victim and oppressor. In other words, it is the always already reproduced nature of the political subject which raises problematic questions for group identity and rights because reproduction is inseparable from repudiation. That is to say, the identity to which rights refer is something which only originates in the repudiation of other sites where the need for equality is still to be raised. In something of a nutshell, the difficulty here is that although the need to reproduce its centre means that the identity of a group is always open to contestation, as we saw with the name "woman" this also means that injustice, intolerance, and oppression are always reproduced on those differences whose repudiation allows this contestation to take place.

Two crucial conclusions appear to follow from this analysis. The first is that no group can ever be understood as authentic. The second is that no society can ever exist without oppression. And as we see here, the second conclusion follows from the first. I make these points for an important reason. On the one hand, they force us to rethink the argument by theorists such as Iris Marion Young that group identity and group rights can resolve the tension between the need for equality and the respect for difference in contemporary liberal thought, while on the other hand they allow us to critically interrogate the terms under which conservative multiculturalists such as Charles Taylor would seek to impose limits on the terms for recognising group difference as the basis for equal worth. In the first case, Young wants group identity to be the basis for an "unoppressive society," and in the second Taylor deploys a discourse of "authenticity" as the basis for group recognition. I take up these points in the next chapter.

CHAPTER NINE

GROUP RIGHTS AND THE POLITICS OF CULTURAL AUTHENTICITY

In his well known essay on multiculturalism, Charles Taylor begins with the claim that a "crucial feature of human life is its fundamentally dialogical character,"¹ which is a way of saying that our identity is shaped by the recognition of others. Taylor argues that prior to the eighteenth century this recognition was provided for automatically through hierarchical social structures. However, with the appearance of the idea of authentic self identity at this time, he also argues that this structure collapsed and was replaced by the modern system of democratic politics structured horizontally on the principle of equality. Within this shift, Taylor proposes that although the location of the self moved inwards the need for recognition was maintained. Thus, a monological self was constituted against a dialogical structure of self-identification. What made the modern self different, Taylor therefore argues, is that it seeks to have an authentic self identity recognised in its relationship with others. It is in this context that Taylor starts to explore the question of recognising rights for minority cultures.

For Taylor, then, modern identity is something which must now be achieved through each person seeking identification with an authentic self through the recognition of others. As a result, the demand for cultural rights for minority groups reflects the fact that cultural context can be a crucial factor in shaping the self. In this respect, certain cultural rights become consistent with individual rights when the latter are intended to ensure that equal worth recognises what is authentic in the self. At the same time, however, Taylor makes the argument that the demand for the equal recognition of minority cultures has itself led to discrimination and in turn presents solutions which also

go against equal treatment. His major example here is positive discrimination, which he suggests excludes majorities to meet the demands of minorities.

In one respect, therefore, Taylor is sympathetic to the position of cultural minorities, since he recognises that liberalism is wedged on the horns of the equality versus difference dilemma where meeting the claim of equality always leads to discrimination. In other words, so long as society is divided into majority and minority cultures the signifier 'equality' will always take the side of the larger particularity, thus forcing upon minorities a hegemonic culture to which they must conform. Recognising equality then becomes a form of repression. Taylor therefore argues that it is its blindness to difference which ironically prevents liberalism from achieving its fundamental value of equality. As a result, Taylor argues that liberalism and the liberal state have to find a way of reconciling equality with difference in a way which does not simply reproduce discrimination. At one level, this project is at the heart of his essay on multiculturalism.

A key idea which Taylor introduces in this project is that of "survival." It is the right of survival which a liberal political community must seek to establish for cultural minorities if it is to reconcile equality with difference. One example which he gives is the familiar one of the difference represented by Quebec culture within Canada. Taylor argues that the right of Quebecers to their own language needs to be recognised by the larger population of Canada since it is essential to the authentic selfhood of the members of that community. As he suggests, "Policies aimed at survival, actively seek to create members of the community, for instance, in their assuring that future generations continue to identify as French-speakers."⁴²⁹ As the right to survival suggests, Taylor distinguishes between two categories of rights: fundamental rights which can never be placed in question and privileges or immunities.⁴³⁰

For Taylor, the identification of privileges and immunities set apart from basic rights allows the dominant culture to bend to accommodate the right of minorities to cultural survival. In the case of Quebec and Canada, this means that the right of

Anglophone Canadians to have signs and other matter printed in English was a privilege which could bend to accommodate the fact that the survival of the French language was fundamental if Quebecers were to recognise their authentic self identity. To have done otherwise would, Taylor suggests, have damaged equality as the idea most basic to the expression of liberal sentiments. Therefore, questions about the authenticity of a culture and its role in identity formation would, he argues, have an important place in judging the adequacy of rules which are applied to any discourse on rights.⁴³¹

For Taylor, the central element of this justification is that certain cultural practices have contributed to the longevity of that culture and that as such they need to be granted the right of survival because, in persisting over time, they have animated the history of the larger society of which they are a part. That is to say, in so doing they have provided a basis from which this dominant culture can recognise its own authentic self. In doing so, Taylor therefore sets to work a number of important distinctions, the most important of which is that between a dominant culture and a sub-culture. On this basis, that is, after having silently established the possibility of a centre to cultural identity, he is able to distinguish between authentic and inauthentic cultural practices. This distinction in turn allows him to make the further move of separating culture from politics (since authentic cultures will be non-political in contrast to inauthentic cultures which, by implication, will have at least some political interest at work in them), and thus to mark off true recognition from misrecognition.

Finally, having established the ontological possibility of recognising an authentic cultural minority, he can then distinguish the fundamental rights of all individuals from privileges which are more closely aligned to the norms of a majority culture and which can therefore bend to accommodate this authentic minority group. Once he has run through all of the metaphysical distinctions necessary to create an authentic cultural minority, all he therefore has to do is juxtapose it to the dominant culture as anti-thesis and synthesise the two on the question of longevity, since it is this which allows the

dominant culture to recognise its own authentic self. It is therefore the possibility of actually identifying an authentic minority culture (which has persisted over a long period of time) and distinguishing it from a dominant culture which forms the basis of Taylor's attempt to resolve the tension between equality and difference in the context of multicultural politics.

However, it is just this ability to effectively distinguish an authentic culture from an inauthentic culture which my discussion of group identity in the contexts of both post-colonial understandings of travel, diaspora, and hybridity, and critical legal feminism, with its focus on the tension within identity between gender and race, have brought into question. As we have seen, differences of race are internal to the signification of an authentic gender identity such as "woman," just as differences of gender, generational experience, and cultural geography are internal to the representation of racial identities such as Asian-American. In this respect, the difference represented by the name "woman of colour" deconstructs the idea of an authentic group identity across the major fronts where this is asserted by critics such as Taylor. Rather than authentic cultures and inauthentic cultures, or even majority and minority cultures, what we have instead is a much more fluid and contradictory structure, one in which the allocation of rights to a group in order to address discrimination based upon either gender or race involves a contingent act of essentialisation in which, as we have seen, problems of injustice, intolerance, and victimisation are not resolved, but are instead shifted onto another plateau of difference.

In this context, Derrida's own interpretation of survival provides the opportunity for another critical intervention into Taylor's narrative. Where Taylor argues that the authenticity of a culture is to be found in the longevity through which it animates the history of the larger culture which surrounds it, Derrida's reading of the phrase "living-on" takes up the question of longevity as one of temporality (in the Heideggerian sense) and moves our understanding of what survival means away from the issue of authenticity

and towards the question of the trace as the minimal level of difference which allows any identity to come into presence. As we have seen, Derrida's point here is to show that without a centre an identity does not survive in an authentic form; its relationship to the present is not one of self-presence. Rather, because its centre is reproduced from the first instance of its coming into presence, identity instead survives through what he calls "a differential network, a fabric of traces referring endlessly to something other than itself, to other differential traces."⁴³² In this respect, because the centre of any identity is deferred through the movement of the trace, authenticity is exchanged for what he calls a system of margins or borderlines, so that rather than living-on historically as Taylor argues in his principle of longevity, cultures are always "living-on" - and in this respect live only on - the borders of other cultures. For as Derrida suggests, "living on goes beyond both living and dying,"⁴³³ something which he illustrates in his reading of yet another word, this time the French word "arrete."

As Derrida shows here, this understanding of living-on is found in the deconstruction of the distinction between speech and writing. Thus, it is the inability to remove inscription from the spoken word which turns words like "arrete" into a system of margins. As a result, Derrida shows that the meaning of "arrete" survives not because of any authentic relationship to the voice (which would allow it to be reproduced mimetically and therefore, as Taylor wants to argue, live on historically) but because in its spoken form it constantly faces the possibility of being lost in translation as it is used both as a verb and as a noun. That is to say, arrete with two "r's" denotes stopping, while arete with one "r" denotes a sharp dividing line.⁴³⁴ Therefore, when they are spoken we are unable to finally determine which one is being referred to. Hence, "ar(r)ete" "survives" precisely because it can never be reduced to an authentic self-presence. In other words, survival is the pure possibility of meaning; meaning as pure potentially-for-Being, or as Derrida occasionally refers to it, play.⁴³⁵ The word "arrete" is, of course, a particularly useful example since, like many of the other words which Derrida explores,

such as *differance*, it explains the site of its own event, which is always the event of the other as that which cannot be reduced to the self even while it remains identical. Thus, on the one hand, the undecidability of "ar(r)ete" is reflected in the impossibility of finding a place of stopping, while on the other hand it confirms that, rather than being authentic, the meaning of the word is only found on the dividing line between the two interpretations. Both readings therefore mark the event of the other since both are irreducible yet remain identical as representations of the word ar(r)ete whose movement between the first and second "r" we are unable to detect in speech. As a basis for rethinking the survival of cultural identity, this suggests that the identity of a racial or gender minority survives because the name Asian-American or woman, for example, lives on the borderline which appears at the intersection of racial, gender, sexual, class, and other identifications and is made present only through the differences which are repudiated there. Rather than authenticity, we might instead take Derrida's term "antagonism" as a metaphor and starting-point for thinking about group identity. This would certainly permit a more critical intervention into the identities of woman and Asian American. As he suggests, it gestures towards the "playful variability" which never lets up between the different contexts of interpretation.⁴³⁰

This use of survival as a point of intervention into the politics of cultural recognition was in fact taken up briefly by Homi Bhabha in an interview in 1991 where he also started to give a more precise understanding of its critical political implications. As he suggested in this interview, "Surviving, for me, is obviously a profound sort of marginal and boundary problem: it's where polarities, social polarities and binaries are brought into question."⁴³⁷ He gives the example of "the women's issue" and suggests that the issue here is one of surviving across the public/private split when women occupy both public roles as workers and private roles as mothers and lovers. As he adds, "I mean to use survival, then, in this very strong sense of the incommensurable in social, political life: not merely as a form of diminished existence." Perhaps most importantly, though, he

uses the issue of survival to confirm that the politics of cultural recognition is not about the question of authentic versus inauthentic cultural identities but rather the constitution of those identities as such. Thus, he argues that in contrast to those who "assume that the struggle goes on between preconstituted agents of cultural change....the thing we name as culture - our awareness of what a culture is, and of cultural difference - is always a naming of a crisis, a crisis of survival. What naming does, with all its ambivalent problems, is to show discursively that culture is the strategic activity of 'authorising' agency: not the interpellation of pre-given sites of celebration or struggle."

The important point here, therefore, is that, like Derrida, he opens the way for us to deconstruct the distinction between culture and politics. That is to say, it is because cultures only come into presence on the borders of other cultures that representing what is authentic about a culture is not simply an analytical description of that culture, but, as Bhabha suggests, also a performative act which actually constitutes that identity by limiting the borders within which it is reproduced. Amelie Oksenberg Rorty has raised this point in her reading of Taylor's essay. As she says, "it is a curiously ironic feature of many recent arguments in the politics of entitlement - Taylor's among them - that they have often appealed to the poetics of idealised cultural identity without fully acknowledging the ways that characterising the "identity" of a culture is itself a politically and ideologically charged issue."⁴³⁸ In Taylor's case, her point is that he uses the term culture interchangeably with his understanding of language in order to produce an interpretation of culture which is both essentialised and (therefore) depoliticised. In other words, Taylor's dependence on the discourse of authenticity leads him to ignore the fact that the need for cultural re-presentation makes language an always already political issue. The Quebec language issue which Taylor uses is therefore not simply about the right of an already constituted cultural identity to equal political rights. More fundamentally, it is about the discursive limits within which it is possible to identify as Quebecois.

As a result, rather than being able to question the basis upon which dominant and minority cultures come to be distinguished, as David Palumbo-Liu does when he explores the strategies of cultural appropriation through which a dominant white American identity reproduces its hierarchical relationship to black identity, or questioning the ethical limits of equality, as William Connolly, Slavoj Žižek, and Gassan Hage do, Taylor merely proceeds to displace both the issue of appropriation and the tensions between justice and injustice and tolerance and intolerance into an essentialist assumption about cultural identity. The point here, of course, is that because he fails to see that the authority upon which any dominant culture attempts to legitimate its privileged right to judge the authenticity of a cultural minority is based upon an actual act of appropriation from one of those cultures, he fails to politicise the question of identity and thus explore the process of repudiation which must take place within any moment of legal recognition. In this respect, he is like Hannah Arendt in that he fails to see the originally violent nature of any "community" acting together, so that whereas Arendt attempted to exclude violence from the public sphere by making the social question an instrumental rather than a political issue, Taylor attempts to ignore the strategies of appropriation which any dominant culture must adopt to centre its identity by deflecting the issue of authenticity onto the minority culture. And it is, of course, then through his totalising distinction between authentic and inauthentic cultural minorities that the violent repudiations of race and gender which black and Asian-American woman must perform on themselves in order to appear as *just* black, or *just* women, or *just* Asian-American are also ignored.

Gayatri Spivak supports the critical significance of this argument when she recounts her own experience of being required to "speak *as*" the representative of a given culture.⁴³⁹ As she points out, this involves a distancing from oneself which is always homogenising. As she argues, "The moment I have to think of the ways in which I will speak as an Indian, or as a feminist, the ways in which I will speak as a woman, what I am doing is trying to generalise myself, make myself a representative, trying to distance

myself from some kind of inchoate speaking *as such*. There are many subject positions which one must inhabit: one is not just one thing."⁴⁰ The point which Spivak makes here is that rather than the condition of being heard, representation is in fact the condition of being silenced. Thus, she reads her invitations to go to conferences to speak as the representative of the Third World point of view as an act of "tokenism" which allows the Western listener to feel reassured that everything that can be said about the Third World has been said. As she says, "this question of representation, self-representation, representing others, is a problem."⁴¹

The example of Taylor's approach to group identity suggests that this problem is to be found in the way that the issue of appropriation between dominant and minority cultures is displaced by making a metaphysical demand for "authentic voices." Indeed, the problem faced by Spivak was precisely that as the token representative of "Third World Women" she was herself appropriated by the dominant academic culture by whom she had been "invited." This issue of appropriation and its relationship to the use of token inclusions to reinscribe the boundaries of a "dominant" culture is one which we shall return to in the case study, as will be the questions of cultural authenticity, equal recognition, and their relationship to the production of repudiated identifications. However, rather than focusing on the critical issues which can be raised at the intersection of race and gender, I will attempt to shift the focus of these issues to the less explored intersection of race and sexual orientation.

On the way to this though, if the demand that "minority" cultures must represent an authentic identity leads irreducibly to the production of violent repudiations "within" that culture, it seems important to first of all critically analyse the work of those writers who have argued that making group identity the basis for a legitimate claim to equal rights can contribute to an unoppressive society. As we saw earlier in reviewing Rawls' theory of a just society, the traditional liberal response to this problem is to make the founding assumption that everybody can be just the victim. As we saw through Rawls'

formulation of the original position, oppression is then avoided in liberal society because the victim provides a transcendental site from which equality is sent out. Although it challenges the individualistic basis by liberalism, the idea of group rights, however, remains within the assumptions of this framework. That is to say, through the discourse of authenticity, group identity is brought within the logic of what is original to the position of being a subject, so that accounting for the differences which emanate from group identity become an essential part of allowing subjects to participate equally and achieve a full inclusion in any political system. In this respect, authentic cultural minorities will themselves be able to claim the identity of the victim. Thus, like liberals such as Rawls, those who have attempted to justify the theory of group rights have looked to the argument that recognising group difference can contribute to a basically unoppressive society. We can understand this point better if we review the argument which Iris Marion Young has made in favour of group rights.

Young begins her analysis by recognising the tension between equality and difference which appears with the question of representation. Across a number of sites where she looks to intervene and make the case for recognising group difference, such as the ideal of community or universal citizenship, Young argues that the desire for unity or wholeness can lead to pressures for homogenisation in which, as she puts it, "those motivated by it will tend to suppress differences among themselves or implicitly to exclude from their political groups persons with whom they do not identify."⁴² Therefore, on the one hand, Young is able to recognise that difference is always internal to identity, so that, as she puts it, "the process of totalising itself expels some aspects of the entities."⁴³ In this respect, she explicitly adopts a Derridean critique of the ideals of community and citizenship. As she argues, the opposition between individualism and community is like that between masculine and feminine and public and private in that it is internal to the bourgeois culture which has shaped modern political theory. Thus, simply reversing the value of these oppositions does not constitute a genuine alternative

since together they both represent a denial of difference.⁴⁴⁴ Indeed, as Young points out, it is the desire for community which underlies and validates discourses of racism and other forms of chauvinism.⁴⁴⁵ It is in this distancing of community from inclusion, therefore, that Young creates the argument for acknowledging group rights.

In many respects, her notion of group identity is consistent with the one I have put forward through my reading of Derrida and cultural theorists such as Bhabha, Hall, Clifford, Feng, and Lowe. For example, Young recognises that although in a racist, sexist, and homophobic society it is necessary for members of victimised groups to solidify a common culture, "too strong a desire for unity can lead to repressing differences within the group or forcing some out: gays and lesbians from black nationalist groups, for example, or feminists from Native American groups, and so on."⁴⁴⁶ Thus, in her discussion of citizenship Young argues that "A social group should not be understood as an essence or nature with a specific set of common attributes."⁴⁴⁷ Instead, as the product of what she describes as "social processes," she argues that groups are fluid relations of difference which can come into being and fade away historically.

However, having made these important steps, it is when Young attempts to address more practical questions, such as how group identity and representation can promote just outcomes in a democratic decision-making process, that the critical limitations of her attempt to theorise group rights become apparent. This is because although Young distances herself from Habermas' concept of communicative ethics, arguing that he "retains inappropriately an appeal to a universal or impartial point of view,"⁴⁴⁸ she is then forced to rely on groups to provide the dialogical rationality which can resolve disputes in a just manner. The point here is that under these circumstances Young's understanding of groups as fluid relations of difference rapidly fades away into what she describes as the "structures of group representation" which can provide the "different social locations and experiences from which social facts and policies are

understood."⁴⁴⁹ At this point, then, the discussion of the internal tension between group identity and difference is brought to a halt.

Young acknowledges this as a problem, and in this respect her response signals a slide back into the response offered by Taylor. Thus, Young is forced to establish her own distinction between cultures and sub-cultures, dominant and dominated groups, and universal and special rights. For example, in the case of the right of cultural minorities to have their language differences recognised as a right of citizenship, Young follows Taylor in arguing that cultural assimilation should not be a condition of full social participation since this means annihilating the minority group's identity. Like Taylor, she therefore makes a juxtaposition between authentic and inauthentic cultural minorities, so that the principle of recognition applies "only to sizable linguistic or cultural minorities living in distinct though not necessarily segregated communities."⁴⁵⁰ Where Taylor takes the Quebecers in Canada as his example, Young takes Spanish-speaking Americans and Native Americans to illustrate her point. Thus, the contingency which Young accepts into her understanding of group identity is fundamentally constrained by her desire to recover and reinvigorate the liberal values which she sets out to critique.

As a result, by the end of her discussion the internal relationship of difference to identity is forgotten as group identity provides the basis for another vision of the unoppressive society. Indeed, Young maintains that her analysis of group rights does not exclude the possibility of a universal rationality through which to make normative claims.⁴⁵¹ Thus, as I suggested earlier, we again find ourselves in a position in which the problem of oppression is resolved because a position is found where everyone is able to take on the role of the victim. In fact, the communicative logic which informs Young's closing remarks suggests that the need for group identity may itself only be historically contingent. However, as our discussion of groups such as women or Asian Americans has suggested, because group identity is actually constructed on the margin of other group

identities, so that these "groups" remain internal to the representation of any group as such, no society is ever able to escape its relationship to oppression.

Interestingly, Young leaves this teleological argument out of her later text on Justice and the Politics of Difference, where she instead shows greater sensitivity to the tension between representation and violence. As she puts it, "But does not such affirmation of group identity itself express an ideal of community, and is it not subject to exclusionary impulses?"⁴⁵² She thus returns to the issue which she explored in her earlier critique of the ideal of community. For as she reiterates here, "If in their zeal to affirm a positive meaning of group specificity people seek or try to enforce a strong sense of mutual identification, they are likely to reproduce exclusions similar to those they confront."⁴⁵³ What would then be interesting would be to see how she might respond to the tension which this creates with her desire for an unoppressive society, the tension which she had earlier resolved through her return to Habermas. However, this a question which she largely fails to address in this text. The nearest that she comes to a positive statement on the matter is in her closing remarks to the paragraph from which I have just quoted, to the effect that she believes that "Those affirming the specificity of a group affinity should at the same time recognise and affirm the group and individual differences within the group."⁴⁵⁴ The point here is that what is missing from Young's narrative is a more critical analysis of the consequences of recognising group identity when identity itself is only ever an after effect of the repudiation of an internal and constitutive difference.

Therefore, in response to Young and by way of a conclusion to this part of the thesis - which also opens up a space in which we can both reflect back upon our earlier discussion of agency, identification, and the law, and look forward to the case study which follows - I want to explore an alternative interpretation of the recognition of group rights from the one identified at the end of her analysis of universal citizenship. That is to say, where Young argues that the recognition of group rights can promote the universality

competent form of communication necessary for a non-oppressive society, I will introduce another logic in which the recognition of group rights, such as those consistent with the identity politics which we have considered here in the context of feminism and multiculturalism, forms part of a "pathology of difference," one in which the attempt to stabilise the contradiction within liberalism and the law between equality and justice leads to the production of identities whose totalisation takes place at increasingly fine levels of individuation. In other words, the other logic at work in the recognition of groups is one where the demand for equality made by the new political identities of gender and race are implicated in the extension of the forms of totalisation and individuation described by Foucault in his account of disciplinary society.

As I suggested above, at the level of strategy, the focus on being solely the victim poses serious problems for any theory of group rights, for, in turning their abjection into a positive affirmation of identity, subordinated groups reinscribe the same logic of repudiation which they have attempted to oppose. As Judith Butler notes in one of her texts, "There is some risk that in making the articulation of a subject-position the political task, some of the strategies of abjection wielded through and by hegemonic subject-positions have come to structure and contain the articulatory struggles of those in subordinate or erased positionalities."⁴⁵⁵ Thus, on the one hand, as Butler points out, we find that gay and lesbian politics work to repudiate bisexuality in a way which reinforces the monosexual logic of heterosexuality, and, on the other, as in the case of our example, we find that black opposition to white identity and female opposition to male identity both work to repudiate the identity of the black woman at the same time as they reinforce both monosexual and monoracial categories of Being.

As Butler suggests, the pluralist approach to the problem of exclusion, the one which is present though at different levels in Taylor and Young, is simply to multiply numerically the number of subject positions within an existing political framework. However, as we have seen, even though such positions may be necessary to stage

resistance to a specific oppression, they are produced through the equivalent multiplication of abject identities such as those of the gay and the lesbian, the bisexual, and the black or Asian woman. As Butler puts it, "The multiplication of subject-positions along a pluralist axis would entail the multiplication of exclusionary and degrading moves that could only produce greater factionalisation, a proliferation of differences without any means of negotiating amongst them."⁴⁵⁰ Thus, it appears as though there is indeed what I have called a "pathology of difference" built into the logic of resistance, one constituted out of the continual need to ground that resistance in a citational reference, and which arises because it allows those not cited to site themselves as victims.

In other words, as Gayatri Spivak showed in her analysis of the subaltern subject-effect, it is because the victim and the oppressor are always already internal to the possibility of each other, so that the subject is practicing domination even at the moment of its liberation, that the problem of justice cannot be resolved within the logic of representation at work in liberal theories of distributional fairness. Instead, by making equality the measure of justice, the threshold of social and political tolerance is constantly extended as the tension between resisting oppression and experiencing victimisation is displaced onto the site of ever new political identities. Thus, what appears as historical progress, the gradual extension of difference into the principle of identity, is really part of a much more ambiguous process in which progress continues to remain within the exercise of power. That is to say, the extension of the recognition of difference can be read as part of the strategy through which liberalism, by deploying difference as a means of extending individuation, both contingently stabilises its own internal contradictions (such as those between the victim and the oppressor and equality and justice) *and* enlarges the scope of disciplinary society as this is described by Foucault. In this case, the principle of toleration becomes an important technique through which the self is constituted as an object, while the association of justice with equality

becomes an equivalent technique in the constitution of the self as a subject. In this context, the tensions within liberalism can be interpreted as part of what Foucault called government, the key aspect of which was the production of resistances by a system which then reabsorbs them.

We can support this interpretation of liberal theory by reading the work of Wendy Brown. What we have looked at here as the internal contradiction between equality and justice, Brown approaches as "the latent conflict within liberalism between universal representation and individualism."⁴⁵⁷ As Brown proposes, the history of liberalism's management of its latent conflict could be read as a history of variations on and vacillations between these two strategies. In this respect, Brown confirms the connection between equality and justice and the extension of disciplinary society. As she says, liberalism works because it produces politicised identities which are orientated "toward protest against exclusion from a discursive formation of universal justice."⁴⁵⁸ Therefore, as Brown puts it, "although the terms of liberalism are part of the ground of production of a politicised identity...liberal discourse itself also continuously recolonises political identity as political interest - a conversion that recasts politicised identity's substantive and often deconstructive cultural claims and critiques as generic claims of particularism endemic to universalist political culture."⁴⁵⁹ In other words, Brown is suggesting that liberalism's latent conflict is something which is internal to and produced by liberalism itself; resistances which, as Foucault says, it then reabsorbs.

In this respect, the tension within liberalism between resistance and domination gestures towards what William Connolly had in mind when he described the modern subject of liberal theory as "an essentially ambiguous achievement."⁴⁶⁰ It also points towards what Gayatri Spivak proposed when she described the "I" as an "enabling violation."⁴⁶¹ Most importantly, Spivak describes the tension between resistance and domination as the constant presence of doubling effects, so that in its resistance the "I" is always drawing from relations of power in which it is implicated and into which its

opposition feeds back. In this respect, we are able to confirm our earlier argument in support of Foucault's point that there is never an outside to power, as well as Derrida's more-or-less equivalent suggestion that there is no privileged word through which deconstruction can be performed.

Therefore, to return briefly to Young and her suggestion that the recognition of group identity can provide a way of furthering the liberal ideal of an unoppressive society, it is because the tension between resistance and repudiation is not resolvable but instead the basis for the appearance of new sites of identity where this tension is again played out that no society can reach a point at which it is free of oppression. This is not to say that the discourse of liberalism simply leads to oppression, but neither is it to say that the recognition of difference is simply about the extension of freedom. Rather, as we shall see in our case study, the point here is that freedom always remains contingent because resistance to oppression works within a structure of repudiation which reinscribes many dominant cultural norms and judicial interpretations even as it leads to the reconfiguration of others.

The point here is that just as we never have the vantage point which Rawls attempts to find in the original position, and just as we never have the vantage point through which to legitimate the authenticity of those groups which appear under the name "woman" or "Asian-American," so the internal relationship between resistance and repudiation means that we are never in a position to finally judge the relationship between liberalism and discipline. To do so, to either accept or reject it, would be to give into the metaphysical structure of either/or choices which would itself reinscribe the authority of liberal discourse. In other words, it would be to give into the unreflective polemics of theoretical speculation in which we forget the salience of the question of Being for identity politics and thereby restrict ourselves to formulating the issues which reside along the ontic difference. However, to take the position that we can overcome the imaginative limits of liberal theory simply by reviewing individual cases in which the

demand for justice is made is also insufficient, since, as we have seen here, the condition of every case is always doubled: creating exclusions and injustice, and denoting intolerance, at the same semiotic turn that it creates a point of inclusion and justice, and so denotes tolerance. As I have already suggested, like all structures of representation in liberal society from congressional districts to racial identity, every name, word, and phrase provides the site of a "dangerous protection." In themselves they are neither good nor bad. Rather, because they have to be "made present" they are, as Connolly suggests, always a cluster of ambivalent effects. In this respect, the responsibility of the critical philosopher must be to remain in the mode of a persistent critique rather than search for an identity which can provide critique itself with a privileged site of deconstruction.

PART FOUR: CASE STUDY

BETWEEN RESISTANCE AND REPUDIATION: THE POLITICS OF MULTIRACIAL IDENTITY IN AMERICA

As I have tried to suggest in this thesis, if we follow the critical strategy which Derrida explores in his reading of the term *differance* then our analysis of politics becomes coterminous with an analysis of identity. That is to say, because *differance* cannot be thought outside of the play of *differance/difference*, to represent the identity of *differance* is always already to have engaged with politics. In other words, what Derrida's reading of *differance* shows is that there is a performative force to representation, and that it is this force which collapses the boundary which more traditional, metaphysically orientated approaches perceive to exist between politics and identity. Thus, we have not tried to show the significance of questions of identity *for* politics but rather that questions of identity engage, as I have just said, the question of politics itself. The key point here is that the performance of identity is structured around a non-identical sameness, so that each representation of *differance* puts into play a non-decisive repudiation of *difference*, the other term with which it is the same yet not identical.

It was this paradoxical situation, where the centre of identity can never finally be closed, which led us to make some crucial conclusions about both agency and resistance, the most important of which was that resistance is always staged upon a simultaneous moment of repudiation. In this respect, it became apparent that to speak simply of politics was to make the disingenuous assumption that the field of "the political," the site of cultural and legal inclusion where "politics" is thought to take place, could itself be finally closed. Thus, we realised that the focus of critical analysis needed to be directed towards the repudiations through which resistance to oppression and the achievement of

inclusion bring about the suturing of the political. In other words, we saw that the politics of identity was about the performative force that is brought to bear in the representation of the political. As this suggests, the traditional attempt to analyse politics distinct from an analysis of the political inevitably involves an exaggerated claim about what can be achieved concerning the representation of identity. An obvious conclusion to draw here is that those who have traditionally focused their attention on the study of politics have engaged in that same forgetting of the question of the meaning of Being which Heidegger found in his critique of metaphysics, a critique which through our reading of Derrida "we" have (perhaps) also joined.

In this respect, it is the question of Being as the site of the political which is recovered by the study of identity politics. As this suggests, what appears like a far more modest set of questions is now given critical attention. Nevertheless, they are consistent with the finite possibility of representing identity within which analysis must now take place. More importantly, we are now able to make the question of violence our constant focus, since it is through the repudiation within the subject of certain prohibited identifications that the political is sutured together. To put this slightly differently, the political is sutured together when the subject engages in those acts of discursive self-mutilation which are necessary for its cultural and legal inclusion. In this respect, our analysis needs to be directed at least in part to how this prohibition on identification leads any act of resistance to oppression to be always already engaged in a moment of repudiation and therefore in a violence towards other no less legitimate possibilities for Being. It is therefore this tension between resistance and repudiation which frames my approach to the case study which follows below.

It is this "method," the one which I have been attempting to elaborate on during the chapters of this thesis through reference to other writers who have also taken up certain Derridean themes, which I therefore want to bring into play in an attempt to understand the limits to identifying as multiracial in America. As I will try to show, it is

important to understand that these limits are imposed by a "law" whose force resides in the performance of the dominant norms of American culture, a performance which takes place through such sites as the judicial system and the news media and whose focus is the repudiation by gay men and lesbians of their sexual orientation. In this respect, it is by working through the tension between multiracial identity and the dominant norms of American law and culture that in the conclusion to this thesis I attempt to open up a new arena of identity politics by exploring the position of gay men and lesbians who are multiracial. As I suggest here, they confirm at least two things which have been argued for throughout the thesis: Firstly, that contrary to liberal theories of rights the victim never does finally get to speak. As Spivak has remarked, "If the subaltern can speak then, thank God, the subaltern is not the subaltern any more."⁴⁶² However, it is because the right to speak is only possible through the repudiation of the unspeakable, in this case the speech of gay and lesbian multiracials, that the subaltern is in fact always reproduced. Secondly, that as a strategy of resistance passing has not, as some have argued, been passed by coming-out. As I argue here, coming-out reinscribes the violence of a liberal culture in which the right to be different demands the essentialisation of the self as just one thing. Against this, I suggest that passing is not passé precisely because the subaltern never finally gets to speak. That is to say, passing must necessarily persist because the subaltern appears as the repudiated outside to critical resistance and thus represents a site which is prohibited from speaking as a victim. Within this, I attempt to historicise coming-out within the wider historicity of liberalism as a product of the discourse of "equivalence" created by the modern scientific world view, so that in coming-out we are searching for that same "moral equivalence" which motivates liberal theory. Thus, arguing that coming-out is passed by the way in which passing responds to moral imperatives which cannot be reduced to the terms of equivalence, I explore the strategies of passing which might be open to gay and lesbian multiracials as they interact with American law and culture.

The empirical basis for this is provided by the case study itself. Here I offer what we might call a "politics of multiracial identity in America" where I explore how multiracial Americans are constructed as a group identity. In this respect, a useful point of departure is Michael Omi and Dana T. Takagi's suggestion that what is missing from the discourse of both the right and the left in the US today is an explicit discussion of the nature of race and racism. As they propose, "[T]he bipolar model of race relations has revealed an increasing inability to comprehend the patterns of conflict and accommodation that now occur between, and among, many different racialised groups."⁴⁶³ However, as I will illustrate below, the significance of multiracial identity in the US today is one which must be extended beyond this singular focus on race. Instead, I will suggest that the resistance to the monological categories of racial identity found in the US census places multiracial identity at the intersection of a much broader coalition of subject positions which together organise the dominant narrative of American identity.

In doing so, I therefore look to work through some of the difficulties posed by even Omi and Takagi's more insightful attempt to look at the question of racial identity in American politics. As will become clear, these difficulties focus precisely on the question of methodology. Not on the question of a wrong methodology, but on the way in which the attempt to formulate a method for research relies upon the designation of a certain problematic, one which closes out the task of thinking and replaces it with the attempt to theorise. To return to an earlier point, Omi and Takagi seem to have not fully thought through the desire to write for others and so instead have continued to conduct critical research within the assumptions of the ontic difference. That is to say, their desire to transcend the black/white model of racial politics reinforces the ontic isolation of race from its intersection with other sites such as sexual orientation where power is exercised in law and culture; something which then prevents them from exploring how debates over racial identity reinforce not only dominant legal and cultural understandings of sexual orientation but also the historical patterns of sexual orientation discrimination

which they legitimate. Thus, although it is certainly insightful in its analysis of race, I take the work of Omi and Takagi only as a point of critical intervention.

In their study, Omi and Takagi focus on the ambivalent relationship which Asian Americans have to both right and left discourses on affirmative action. Where the American right wants to identify Asians with the image of the model minority, and thus with the rehabilitative thesis of individualism, private property, and enterprise initiative through which an assault on affirmative action can be launched, the left hopes that, as people of colour, Asian Americans will strengthen the political coalition for affirmative action. Consistent with the tensions in liberal understandings of subjectivity noted in earlier chapters, the right wants to reinscribe Asians as token whites in order to keep "real" minorities such as blacks on the margin, whereas the left wants to emphasise the relationship of Asians to the discourse of colourism and so engage them in the struggle against the white centre (a centre which is only provisional precisely because it needs whiteness to structure it). Omi and Takagi therefore take Asian Americans' complex relationship to racial politics in the US as a point of departure for arguing that the politics of racial identity there can no longer be approached by just assessing the relative situations of whites and blacks.

In the terms which I have used above, the play of borderlines between and across the politics of racial identity suggests that we need to focus on how the narratives which centre racial identity come to receive their structure. As Omi and Takagi themselves put it, "We need a new framework that is attentive to a complex understanding of racial location and interest, one that does not essentialise race but interrogates how groups are constructed and represented, one that understands that social policies - regarding immigration, welfare, crime, as well as affirmative action - have a differential impact on different groups and the way they are defined."⁴⁶⁴ While I do not want to take the issue of Asian American subjectivity and the construction of the Asian American self as a metaphor for multiracial identity, it is clear from Omi and Takagi's attention to both the

increasing visibility of Asian Americans and their implication across a range of racial issues in a way which deconstructs the black/white model that they do raise those questions of "racial location" which being of mixed-race also raises.

However, where Omi and Takagi want to take Asian Americans as a "crucial barometer" of the contemporary racial climate,⁴⁶⁵ suggesting perhaps that identifying with the name Asian American is not itself a site of enunciative power - that their identity might only be constructed within the terms of the right/left, white/black struggle - I want to ensure that multiracial identity is analysed as a site *within* the moving structure of force relations where power is exercised. If Omi and Takagi want to take Asian Americans as a space which is neither centre nor margin, which they perhaps suggest when they note that "Unlike "black" and "white" as racial categories, there is a greater fluidity to "Asian American" that can be manipulated in particular ways to suit particular positions,"⁴⁶⁶ I want to set multiracial Americans in a framework in which their constitution as a group identity leaves them as simultaneously both the margin and the centre. It is from this perspective that the third space gains the ambivalence in which we can indeed interrogate how groups are constructed and represented in a way which does not essentialise them, even in an anti-essentialist way.

In order to do this, we have to be aware of the limitations of looking at multiracial identity solely in terms of race. For although multiracial Americans appear in one context to be the victims marginalised by the intolerant structure of monoracial identity which frames US racial politics, when we examine the intersection of race with sexual orientation we find that the presuppositions which frame the debate between monoracial and multiracial identity places multiracial identity at the centre of an intolerant structure of sexual politics in which they become not the victim but instead the oppressor. That is to say, while the monoracial structure of the debate between blacks and whites repudiates the idea of a multiracial identity, the opposition between monoracial and multiracial identity is itself one which is predicated upon a repudiation of gay and lesbian sexuality,

something which is implied by the interpretive framework of the original Supreme Court ruling on interracial marriage in the case of *Loving v. Virginia* but which was made explicit by the current judicial interpretation of the equal protection clause following *Bowers v. Hardwick*; a ruling which not only made same-sex relations but also same-sex families illegal. In this context, multiracial Americans who are also either gay or lesbian, as well as gay men and lesbians from different racial backgrounds who want to marry and start an interracial family through adoption or artificial insemination, mark the ambivalent margin of multiracial identity; a margin which, within the attempt to think the possibility of Being-multiracial before the law, can, as we shall see, return to leave its centre decentred. In this way, we not only find that multiracial identity only "exists" when it transgresses other systems of difference than race, but also that this identity is therefore never outside of the exercise of power. As we shall see, rather than interpreting them as *just* the victim, we can better understand multiracial Americans if we situate them within Spivak's account of the "subaltern subject-effect." In other words, instead of simply being the victim we need to interpret them as the hybrid site or third space where both centre and margin are brought into play.

CHAPTER TEN

BEYOND MONORACIAL IDENTITY: MULTIRACIAL AMERICANS AND THE POLITICS OF RESISTANCE

As my introductory comments have suggested, the first move which we need to make in this case study is to understand how the multiracial self is constructed as a racial subject and the identity politics which are brought into play here. In this context, the parameters of multiracial self-representation are defined by the discourse of black/white identity politics. Here most multiracial advocacy groups argue that the identity of multiracial individuals is repudiated by the monoracial assumptions which structure this debate. As we saw in chapter six, it is the way in which the debate over such issues as congressional redistricting is organised in terms of either colour-blind constitutionalism or the positive use of racial discrimination which has led to the demand to have a multiracial category on the next census. That is to say, multiracial groups argue that although they have been the beneficiaries of colour sensitive discrimination since the civil rights era, it is now apparent that the civil rights movement effaces multiracial identity by privileging black identity in its representation of people of colour. As we noted earlier, since it provides the information upon which different experiences of discrimination can be compared, multiracial groups see the census category as the necessary first step to pressing for legislation which would grant equal protection to multiracial individuals. Within this, a key element in their argument is that the black claim to represent the interests of multiracial people effaces the differences *within* multiracial identity since many racially mixed people do not fall into the white/black framework. In other words, it is only by transgressing the borders of multiracial identity

that black opposition to the kind of white identity politics which we find in the "race-neutral" discourse of colour-blind constitutionalism can take place.

Thus, when black intellectuals and political leaders seek to either claim that they represent the authentic interests of multiracial Americans by pointing to the still culturally pervasive effects of the one-drop rule, or else "out" the multiracial movement as renegade blacks attempting to sabotage the civil rights movement by passing as white, they not only appropriate the tensions in black/white and even black/Asian multiracials but also the identity of multiracials who might be, for example, Asian/white, Hispanic/Asian, Native/Hispanic etc., who therefore have no connection to black identity at all. Therefore, multiracial leaders argue that although blacks may be the unjust victims of white racial intolerance, they are themselves the unjust victims of what amounts to black racial intolerance. Here they argue that the one-drop rule has been used by the black civil rights movement as a form of reversed colourism. In this case the one-drop rule is not used as a form of colourism by whites against blacks, but as a colour based strategy by blacks against multiracials. Therefore, where anyone with one-thirty-second of black ancestry could not be white, now this same rule is used by groups like the National Association for the Advancement of Coloured People (NAACP) to argue that multiracial individuals can only be black. In other words, it appears that by reversing the logic through which the one-drop rule has traditionally been applied in America's racial politics the black civil rights movement have used it as a strategy to try to (re)appropriate multiracial identity; for if the one-drop rule defines what is authentic about individuals with black ancestry then multiracial individuals are not defined by the experience of having two racially distinct parents but instead by the experience of black identity. In this respect, the black civil rights movement have argued that the one-drop serves to mark them as what they authentically are.

Generally speaking, this strategy is put to work in a narrative structure in which black leaders take the opportunity to use multiracial identity to highlight the constructed

nature and political function of racial identity in America. However, it is then this understanding of race which is turned back upon multiracial individuals, usually through a reference at this point to the one-drop rule, to convince them of the dangers of trying to identify as something other than black. Within this, these black leaders are then able to represent themselves as supportive of multiracial individuals' right to self-identity, since they are by then safe in the knowledge that they have offered a strong reason why they would then no longer desire to exercise this right. Thus, multiracial individuals are appropriated twice: Once to support the black civil rights movement's argument that racial identity is a political construct invented by white America, and then again by the very fact that they will be unable to escape the discrimination which it puts in play.

One example of this is Henry Louis Gates Jr.'s obituary of Anatole Broyard, the New York Times book critic and reviewer.⁴⁶⁷ Contrary to some arguments made by multiracial advocates, Gates' strategy here was not simply to "out" Broyard as a black writer passing as white. As Gates points out, "Documents in the Louisiana state archives show all Anatole's ancestors, on both sides, to have been Negroes, at least since the late eighteenth century," which by the criteria of multiracial groups such as Project RACE would make him black rather than multiracial.⁴⁶⁸ Instead, as Gates informs us, Broyard may have had one distant white ancestor, so that by the standards of the multiracial movement he was simply a light-skinned black who chose to pass as white. Thus, we need to be aware of the more subtle strategy which Gates' narrative deploys. Although the article opens with some fairly critical comments about Broyard, including the opinion that he lived a lie rather than be trapped by the truth, the reference to the fact that he kept the truth of his racial identity even from his children, and an implicit comparison with his father who we are told passed simply in order to join a union and gain work, not to mention the betrayal of his blackness gestured at in a reference to his sister's comment that he had wanted to be a writer rather than a black writer, or in the suggestion that he married a white blonde from Norway, or in the quotation from a friend that "He was

actually quite anti-black," by the later part of Gates' essay Broyard has been contextualised within a much larger narrative which takes him (and us) beyond his personal history or familial recollections and into the issues circulating around passing and America's racial politics.

Here we see the double inscription of multiracial identity which I sketched out briefly above, where mixed-race identity is first used to critique America's history of racial discrimination, but where this discrimination then becomes the best reason for multiracial individuals not rejecting their black identity. Here Broyard's life history becomes something like a morality tale. The fact that he passed as white is attributed to the vicious application of one-drop politics in American culture, but his personal difficulties, which for Gates is exemplified by his inability to write a full length novel, are attributed to his denial of his black racial history. Thus, multiracial readers are likely to be left with the impression that Gates is disapprovingly sympathetic to Broyard's life and experience, but because that sympathy is derived from an account of a discriminatory social structure of which they remain a part they themselves are also likely to feel discouraged from following his example of distancing oneself from black identity. As Gates argues, "So here was a man who passed for white because he wanted to be a writer, and he did not want to be a Negro writer. It is a crass disjunction, but it was not his crassness or his disjunction. His perception was perfectly correct. He *would* have had to be a Negro writer, which was something he did not want to be."

Within this, Broyard has already been deployed as a critique, not merely of America's racial politics, but also of the much broader modern culture of "authenticity," the hypocrisy of which Gates uses Broyard to illustrate. As he argues, "One could concede that the passing of Anatole Broyard involved dishonesty; but is it so very clear that the dishonesty was mostly Broyard's? To pass is to sin against authenticity, and "authenticity" is among the founding lies of the modern age." Gates' point here is that Broyard shows that whatever "authenticity" is to be found in black identity is something

which has been placed there by America's dominant white culture. For as he continues, the argument is that "You can say that Anatole Broyard was (by any juridical reckoning) "really" a Negro without conceding that a Negro is a thing you really can be." Instead, he argues that the "vagaries of racial identity" lie in the one-drop rule. The political nature of this rule and the identities which it inscribes are headlined in the next sentence where he offers the following ironic contrast: "When those of mixed ancestry - and the majority of blacks are of mixed ancestry - disappear into the white majority, they are traditionally accused of running away from their "blackness." Yet why isn't the alternative a matter of running from their "whiteness?" In other words, although there can be nothing authentic about racial identity when the majority of blacks have a mixed ancestry, the effect of the one-drop rule is to make black identity function as if it were authentic, since any person of mixed-race who passes as white is seen to be "running away" from their blackness.

Thus, it is not really Broyard which is Gates' focus. Rather, Broyard allows Gates to unlock a much larger question about racial identity, since his act of passing illustrates both the lack of authenticity in racial identity and the significance which racial identity carries when it is dictated by a dominant culture. As he argues, "Broyard passed not because he thought that race was unimportant but because he knew it was." In other words, the mistake is to assume that the birth certificates and other biographical papers that one obtains are simply peripheral signs of that authentic self to which Charles Taylor frequently refers in his attempt to "settle" the politics of recognition. Instead, as Gates points out, they constitute it: "The social meaning of race is established by these identity papers - by tracts and treatises and certificates and pamphlets and all the other verbal artifacts that proclaim race to be real and, by that proclamation, make it so." Thus, by now the implications for multiracial readers is clear. As Gates notes pointedly, "You can't get race "right" by refining the boundary conditions....In a system where whiteness is the default, racelessness is never a possibility."

Thus, Gates has worked a very delicate seam with his narrative. On the one hand, he has not criticised Broyard, at least not directly. Instead, he has "salvaged" much of Broyard's critical significance by locating him within the larger structure of racial discrimination in America, where his life of passing highlights both the inconsequentiality and the consequences of racial identity. In this respect, he functions as a morality tale for those of multiracial identity who would come after him today and attempt to "get race right" by "refining the boundary conditions" which, as we have seen, are to be found in the racial categories of the census. Thus, on the other hand Broyard is criticised in the sense that he provides an opportunity for Gates to invite multiracial Americans to conduct the kind of critical introspection of which Broyard was himself incapable, a failure which proved finally to mark his personal and professional limitations. To this end, the one-drop rule is seen as defining the terms of their inquiry, for its political effect is to make all identities with a trace of black ancestry function in American society as if they were authentically black.

However, Gates is not the only black leader to deploy this narrative structure and Broyard is not the only well known figure to whom it has been applied. More recently it is been employed by other black leaders such as Kweisi Mfume and Jesse Jackson in their response to the controversy set off by the claim by Tiger Woods on the Oprah Winfrey talk show that, contrary to his representation in the press and on television, he is not in fact black. Rather, Woods argued that because his father was part black, part Native American, and part caucasian, and his mother was Asian, he was not just black but in fact a combination of different racial identities, all of which he identified with in some measure. Regardless of this, however, the fact that Woods had been identified with by the African American community and made into a role model for young African Americans made his comments appear to suggest that he was distancing himself from his "authentic" identity.

Thus, in his response to this, Mfume supports Woods' right to self identify, pointing out that "I have never faulted Tiger for calling himself multiracial because he cannot ignore his mother's lineage. The fact that she is Asian is something that's part of him." However, he also evokes Woods' own experience of racial discrimination at the 1997 Masters Championship at the hands of Fuzzy Zoeller to illustrate the limitations of what can be achieved by changing the categories of the census to include one for multiracial identity. As he puts it, "[I]t is important to point out that the discrimination that mixed-race people find in this society is more a function of their appearance and less a function of how the Census Bureau classifies them. They are discriminated against as if they were Black and certainly by people who don't consider them to be White....Tiger Woods is a case in point with the regrettable remarks of Fuzzy Zoeller, who didn't bother to look at Tiger's ethnicity as defined as multiethnic or multiracial. He just saw him as another n---r and Zoeller felt free enough and secure enough to be able to - in willy-nilly fashion - to continue to make those old-fashioned jokes that have haunted the existence of Black people in this country for too long." Therefore, like Gates, Mfume is able to appear conciliatory towards his immediate subject because he has been able to invoke a larger structure of racial discrimination which makes the path of identity taken by that subject at the same time appear profoundly unappealing. As he concludes, it is "[a] fact that in America you live in a society that sees things in very narrow boxes. We live in a society that constitutionally defined as being Black someone who has 1/16 of Black blood in them."⁴⁶⁹

However, these narratives can be countered by exploring the awareness which multiracial leaders have shown for the relationship between multiracial and black identity, both at an interpersonal and political level. In particular, Carlos Fernandez has shown that he realises that many multiracial Americans identify with other racial and ethnic groups as well as with being multiracial, and that simply transferring large numbers of multiracial individuals from a monological to a mixed-race category would

have serious political implications. It is for this reason that the proposals submitted to the OMB's Interagency Committee set up to review Directive 15 by Charles Byrd and Carlos Fernandez made it clear that it would be necessary to have both a general category "multiracial" and sub-identifiers in which individuals could also specify their particular racial mixture. As Fernandez (representing The Association of Multiethnic Americans) noted in a letter to Republican congressman Tom Petri, the congressman sponsoring the bill to force all federal agencies to include multiracial identity in their programme accounting, "[A] stand-alone category poses a possible threat to the legitimate interests of the various minority communities in the US, and thereby to the interests of the individuals in our communities who are also members of these various communities. Only the inclusion of multiple check-offs averts any possible adverse effects...."⁴⁷⁰ The point here is that although checking off sub-identifiers does reinscribe the existing categories of racial identification, it also allows the existing totals of black respondents to be maintained while at the same time acknowledging the existence of a distinct category of people who are not from a single race. Even though the recent OMB recommendations only call for the provision of sub-identifiers and leave aside the general category of multiracial, this move is itself seen by Fernandez and Byrd to be an important recognition of mixed race identity, one from which a campaign directed at the 2010 census can be launched.

This space for sub-identifiers is also cited as important for reasons relating to the multiracial movement itself. For just as the monological assumptions of the census work to efface multiracial identity, so the idea of a box with no sub-identifiers threatens to efface the differences within multiracial identity. As Carlos Fernandez noted in the letter referred to above, "A stand-alone category is equivalent to the "other" category. Our community comprises diverse ethnic mixtures.... We do not wish to deny our connections to our parents communities any more than we wish to be ignored in our own right." Nevertheless, a tension remains because the category remains crucial to the multiracial

movement as a site from which their own particularity can be recognised. As Charles Michael Byrd argues, the OMB's decision to keep the existing categories requires that multiracial people parcel out their identities between them. In other words, there is no opportunity for racially mixed people to represent themselves as multiracial. As Byrd emphasises, "[Y]ou have to have your own icon, a symbol that is representative of an individual of mixed race who identifies as other than mono-racial."⁴⁷¹

This tension between multiracial identity and multiracial difference is highlighted by the position taken by Lise Funderburg, the author of Black, White, Other: Biracial Americans Talk About Race and Identity when she argues that, "I fear that this proposal [for a multiracial category] simply creates another category which multiracial people must fit themselves into. I don't think of myself as multiracial; I think of myself as black and white....[Therefore, given that other multiracial people might be Native and Asian for example] People of mixed heritage should be able to check any boxes that apply. Let all Americans speak truthfully about who they are."⁴⁷² Here Funderburg identifies the fact that "multiracial" would indeed be a broad category which would itself create certain invisibilities, yet her alternative fails to see that even if each multiracial individual spoke the truth about their racial ancestry this would still be done within the assumptions about racial identity made by the census. In this respect, she leaves untouched the key question which is being raised by those engaged in the debate over the census category, that is, just who is being referred to by the term "American" when all Americans speak the truth about who they are? It is this question which we shall come back to in chapter twelve. In other words, both outside and inside the multiracial movement it seems that there is indeed no privileged site of deconstruction.

The point which I want to follow up here is that, as with Asian Americans, multiracial identity is important for political groups such as the NAACP which represent black individuals, since the aggregate numbers of those self-identifying as black on the census is critical to both the justification for and the resources available to affirmative

action policies from education and housing to social security and welfare. It is also central to congressional apportionment via the provision under the 1982 amendment to the Voting Rights Act for minority-majority districts. The fear of groups like the NAACP is therefore that given the history of discrimination against blacks in America, lighter skinned blacks will take the first chance they get to jump ship and pass as a colour that is not black. As Arthur Fletcher, a black member of the US Commission on Civil Rights suggested at the first Congressional hearing held to consider the idea of a new multiracial census category, "I can see a whole host of light-skinned black Americans running for the door the minute they have a choice. All of a sudden they have a way of saying, "In this discriminatory culture of ours, I am something other than black.""⁴⁷³

Consequently, when the courts are already signaling their turn back towards a colour blind interpretation of equal protection in areas such as the allocation of government contracts and congressional districting, the idea of a multiracial category has been interpreted by the black left within a larger narrative in which the white right is attempting to roll back the achievements of the civil rights era. As one editorial in the magazine Emerge reported, "Privately, some Black leaders contend that the multiracial families pushing this movement are pawns for racists, whose real goal is to eliminate racial categories altogether, pushing the nation toward this delusion of a colourblind society. Such a move towards this fraud would dissolve the safeguards the government constructed to promote equal opportunities for Blacks."⁴⁷⁴

This view could be supported by reading Clint Bolick's 1996 article in the New York Times, in which affirmative action is brought under attack by linking it to the same discriminatory use of racial classification which informed the Supreme Court's decision in *Plessy v. Ferguson* in 1896.⁴⁷⁵ That is to say, Bolick argues that although *Brown v. Board of Education* ended the doctrine of "separate but equal," it failed to fully embrace the principle of colour-blindness which Justice Harlan had articulated in his dissenting opinion in the *Plessy* case. Harlan's position that "The law regards man as man, and takes

no account of his surroundings or his colour when his civil rights as guaranteed by the supreme law of the land are involved," then becomes a touchstone through which Bolick is able to criticise what he calls the return which liberals such as Thurgood Marshall made to discrimination when the principle of equality of results led to the reintroduction of racial identity as the basis for constitutional rights in the civil rights laws of the 1960's. Clearly, the rhetorical force of this argument comes from the way it implicitly links the abandonment of racial classification to the achievement of a colour-blind society, so that liberals such as Marshall and Lyndon Johnson are made to stand in the path of America's historical movement towards this higher goal set out by Justice Harlan. Logically, figures such as Bolick would then support a multiracial census category because it not only undermines the existing system of affirmative action but can also be justified within the discourse of colour-blindness. Thus, his article provides a useful example of the type of text which has raised concerns about the multiracial census category among black civil rights groups.

In this respect, the support which they have received from Republican leaders such as Newt Gingrich and from Republican senators such as Tom Petri who introduced House Resolution 830, a bill which would require all government agencies to record mixed-race identity, has also been used by the left to argue that multiracial Americans are the pawns of the American right. For example, in his response to President Clinton's race relations initiative, Gingrich suggested that "A first step could be to add a multiracial category to the census and other government forms to begin to phase out the bounded, divisive, and rigid classifications of Americans as "blacks" and "whites" or other single races. Ultimately, our goal is to have one classification - American."⁴⁷⁶ Moreover, Gingrich's congressional seat is in the state of Georgia, which along with Ohio, Florida, Illinois, Indiana, Michigan and North Carolina, is one of the seven states to have voted in favour of having a multiracial category on all government forms.⁴⁷⁷

Today, groups such as the National Urban League, the National Association for the Advancement of Coloured People, the National Council for La Raza, and the Lawyers Committee for Civil Rights Under Law are voicing the same concerns about the census category. For example, Gary Flowers of the Lawyers Committee for Civil Rights Under Law has argued that "This multiracial hocus-pocus pleases only a relatively few individuals, and for everyone else it's dangerous. It contributes to the pigmentocracy that already exists in America, that says it's better to be light-skinned than dark-skinned. Will it be better to be multiracial than black?"⁴⁷⁸ Similarly, Candy Mills who founded and publishes three magazines for multiracial people - *Interrace*, *Black Child*, and *Child of Colours* - but who opposes the idea of a multiracial category, has argued that it is the parents of racially mixed children who have the identity problem not the children themselves. As she suggests, "I think they see a multiracial category as a way to say 'You're not black. You're better than that.'"⁴⁷⁹ Mills' position is therefore a variation on the general accusation from the civil rights movement that multiracial identity is the invention of white women in interracial marriages, such as Project RACE's organiser Susan Graham, who don't want their children identified as blacks.⁴⁸⁰ As evidence of this they cite the fact that groups like Project RACE have argued that whether an individual is multiracial or not should be determined by the racial identity of the immediate parents rather than by the wider history of miscegenation, which in turn would locate the claim to mixed-race identity within a person's larger ancestry and thus allow both parents to still be black. As they suggest, the effect of this approach would be to mark a definite distinction between black and multiracial identity.

Nevertheless, racial classification has also been a key strategy through which representatives of black identity have sought to resist recognising multiracial identity. Within the legal system perhaps the best documented example of this is transracial adoption, where, as Julie Lythcott-Haims argues, the practice of race-matching arbitrarily classifies adoptable multiracial children according to the one-drop rule.⁴⁸¹ The result of

this is that multiracial children are classified as either black or white depending upon their skin colour and the perception of this by the social worker handling the case. Moreover, she shows that this rule is, ironically, being deployed by the National Association of Black Social Workers (NABSW). A crucial result of this is that many white social work organisations have deferred to the allegedly privileged standpoint of black social workers, so that as Lythcott-Haims points out, "the NABSW has convinced the social workers community...that a Multiracial child loses her cultural identity by being reared in a White home."⁴⁸² Critically, she argues that this situation has its roots in the civil rights era, where the civil rights laws made transracial adoption legal for the first time in the US. Along with the more liberal attitudes to race, this allowed white families to adopt black children. Ironically, however, the result of this was to create fears about the "cultural genocide" of the black community, so that in 1972 the NABSW introduced race-matching to ensure same-race placement in all adoption cases. Within this, Lythcott-Haims argues that the NABSW's position that because of the one-drop rule multiracial children are black has become an additional strategy for preserving and promoting black identity.⁴⁸³ As she concludes, "At worst, it is arrogant selfishness on the part of Black social workers who prefer that a Multiracial child have no parents at all rather than have non-Black parents."⁴⁸⁴ (Perhaps most importantly, race-matching as understood by the NABSW represents a form of racial discrimination which ought to invoke the strict scrutiny of the courts under the Fourteenth Amendment.)

Generally speaking, then, as with Asian Americans and other non-Black identities of colour, multiracial identity represents both a symbol of black anxiety and a political resource which they seek to keep within the terrain of black identity. Because they threaten the existing system of preferences available to African Americans, multiracial individuals have been accused of being what one activist commentator called "Rainbow Saboteurs" and therefore submitted to a strategy where they are "outed" as renegade blacks.⁴⁸⁵ As we have seen in the discourse articulated by Gates, Mfume, and the

NABSW, under this outing the citational inflection of the one-drop rule is inverted so that any racially mixed individual is claimed by black civil rights groups as being essentially black. In other words, although politically constructed, the one-drop is said to define the identity of anyone in America with one-thirty-second of black ancestry as black. As I noted above, multiracial advocates such as Charles Michael Byrd have interpreted Gates' article on Anatole Broyard as an attempt to out a renegade black.

However, it would be a mistake to conclude that it is only the black left who have engaged in the practice of outing. As Jon Michael Spencer points out, multiracial activists have themselves attempted to out certain well-known black figures such as actress Halle Berry and law professor Lani Guinier, who came to public attention when she was nominated by President Clinton for the post of Assistant Attorney General for Civil Rights.⁴⁸⁶ As Spencer argues, by arguing that having one white parent automatically makes a person multiracial, multiracial groups are attempting to automatically remove individuals from the category black. Two points emerge here. The first is that multiracials are giving their own interpretation of the one-drop rule, implying that anyone with only a drop of black ancestry must be more than just black. The second is that because of this figures such as Berry and Guinier are also being denied the same right to choose their racial identity as multiracial individuals are by the black interpretation of the one-drop rule, a choice which, as Spencer points out, the census itself is organised around.

Given that the racial identity of several individuals have become the subject of a politics of appropriation, it is not surprising that recent debates in the press and across the internet have become increasingly heated. On the one hand, multiracial groups are accused of being the naive pawns in the right's attempt to roll back affirmative action, while, on the other hand, the black political community is accused by multiracials of political intolerance. In addition to the more subtle narratives employed by Gates and Mfume, other members of the black intelligentsia have argued more forcefully that "It

the multiracial movement had taken root, or a 'mulatto' category had been kept throughout the twentieth century, black progress might have been no progress at all," while Charles Michael Byrd has argued, "African American adversaries of a multiracial category are loath to speak of mixtures other than black/white. After all, they cannot saddle a black/Asian with "trying to be white," and they cannot saddle a white/Native American with that pitiful guilt-trip line of "trying to run away from your blackness."" As Byrd adds concerning the idea of a multiracial category on the 2000 census. "Acknowledging the existence of these blended individuals blows a hole in the notion that the proposed designation is merely a ruse for black/white multiracials seeking more privileges and freedoms based on their lighter skin colour."⁴⁸⁷ An even more critical position was taken by one contributor to "Counterpoint," a discussion group on the Interracial Voice website, when he suggested that "Black Americans are one of the few cases of a subordinate ethnic group thinking it has the 'right' to commit the ethnic 'rape' of conquerors. American Indians, Asian Americans and others might inappropriately claim some mixed people but they do not generally go into a towering rage over the thought of losing the 'blood' of their 'white' rivals."⁴⁸⁸

At the same time, multiracial advocates like Byrd also cite the fact that the black civil rights movement is itself moving away from a philosophy of integration and towards separation, thus leaving multiracial individuals little option other than to press for their own recognition. For example, at its 1997 annual conference the NAACP supported the idea that "separate but equal may not be so bad after all,"⁴⁸⁹ and already Guilford County Board of Education in North Carolina has voted to redraw its school districts to minimise busing.⁴⁹⁰ Rather than seeking to improve the equality of black students through integration, the argument coming from the NAACP now is that, given that there is a shift against affirmative action in the courts anyway, black politicians should focus on improving the quality of black majority schools rather than try to maintain a strategy which is likely to come under "strict scrutiny" since it makes race a pre-dominant issue in

policy making. In this increasing polarised context it has become apparent to multiracial advocates that the recognition of multiracial identity is now imperative. As Byrd has noted in this context, "The question which we as multiracial people have to ask is where are we supposed to position ourselves: amongst segregationist whites or amongst separatist blacks?" His point is that, as he says, "No principled multiracial can endorse separate but equal. How can we? We are the living, breathing antithesis of separatist and racist dogma. We cannot be separated!"⁴⁹¹

Given that both sides view each others' interpretation of the one-drop as fundamentally affecting their right to equal protection, one way of understanding what is taking place in the debate between the multiracial movement and the black civil rights movement is to situate it within Judith Butler's critical interpretation of hate speech. For example, where the suggestion by the multiracial movement that they are more than just black is interpreted hatefully by the black civil rights movement because it threatens the existing scope of affirmative action, in the case of the multiracial movement reversing the one-drop rule as a strategy for outing renegade blacks becomes hateful because it limits the right of multiracial individuals both within and beyond the black/white binary from exercising their constitutional right to free speech and other constitutionally guaranteed rights. For as Butler has suggested, within the public sphere "If the speech in question has undermined this capacity of the addressee to participate in a constitutionally protected sphere of action and expression, the injurious utterance may be said to have violated, or to have precipitated the violation of, the equal protection clause that guarantees full and equal access to constitutionally protected rights and liberties."⁴⁹²

Within this, what I think the use of the one-drop rule in the census debate shows is that hate speech is possible, which is to say that it is possible for speech to become hateful, precisely because the meaning of the term which becomes hateful is undecidable. This in turn means that we also need to critically reinterpret the way in which we understand outing as a political strategy. That is to say, in the case of the multiracial

movement for example, outing them as renegade blacks becomes a form of hate speech because the term with which the outed subject is associated cannot finally be fixed in a single signifying structure. Kenneth Karst gestures in this direction in his discussion of the issues surrounding outing when he suggests that, "One reason to be cautious in assigning an individual to an identity category is that all such group labels have unstable meanings. One kind of instability, we have seen, lies in the multiplicity of the label's potential meanings, some of which may even conflict with others....As some critics of outing have argued, this instability complicates the moral justification of fastening a group label on an individual when adverse consequences for the person labeled are likely"⁴⁹³ The point which I think we need to make here is that there is a performative force to outing, and that it is this which turns it into an act of hateful speech. To appreciate this, however, we need consider Butler's critical interpretation of hate speech a little more closely.

Butler takes her argument that hate speech is decentred from Derrida's critical interpretation of the signifying structure of the linguistic sign, so that she is able to infer that hate speech is possible precisely for the same reasons that any speech is possible, which is not to say of course that any speech can be interpreted as hate speech. For this to happen it must, as we have just seen, "undermine the capacity of the addressee to participate in a constitutionally protected sphere of action and expression." Nevertheless, the importance of Butler's intervention is to show that the basis of hate speech is that there is no natural signified or individual to which the signifier or hateful word or phrase refers. In this respect, the hateful name or phrase only becomes hateful by virtue of the signifying context in which it is given. As she has put this, "Those offensive terms that mark out a discursive place of violation precede and occasion the utterance by which they are spoken; the utterance is the occasion for the renewal of that interpellating operation. Indeed, that operation is only instanced by the verbal conduct that we seek,

rather hastily, to prosecute, thus misidentifying the explicit moment of discourse, its spoken emblem, as the cause of its most injurious effects."⁴⁴

Because of this we can add that hate speech also conforms to Derrida's reading of the gift insofar as giving a hateful name participates in a psychological circuit which serves to performatively constitute not only the speaker who violates political rights with this hateful enunciation but more importantly the receiver whose constitutional rights are violated because this speech limits a priori the field of possible identification open to him or her. Thus, rather than simply being hateful in and of itself, it is because its performance serves to constitute the receiver by restricting the space in which it can be recognised as a legal subject, thereby determining it in the identity in which it is able to claim rights, that hate speech needs to be given political and judicial attention. This is because, to use Butler's terms, "the [hateful] category cannot exist without the state's ratification, and this power of the state's judicial language to establish and maintain the domain of what will be publicly speakable suggests that the state plays much more than a limiting function in such decisions; in fact, the state actively produces the domain of acceptable speech, demarcating the line between the speakable and the unspeakable, and retaining the power to make and sustain that consequential line of demarcation."⁴⁵ Thus, in receiving speech as hateful we in fact misidentify the moment when it functioned as hate speech. Rather than occurring at the point where we experience the effects of discrimination, it in fact occurs prior to this by determining in advance the range of identifications in which we can be recognised. In Derrida's terms, hate speech has a wondrous retroactivity, and perhaps most importantly from a political point of view fails to persist without the force of its designation.

With reference to the debate between the black civil rights movement and the multiracial movement, this is how I believe we must interpret the one-drop rule: as a term whose decentering from any one designation becomes the possibility by which it can be given hatefully by both sides. That is to say, it is because the interpretive centre of the

one-drop rule is undecidable - does it argue that any person with a drop of black blood is black or does it in fact argue that any person with a drop of black blood is more than just black? - that it has been advanced by *both sides* in order to justify their arguments for and against a multiracial category on the 2000 census. In other words, the "oppression olympics"⁴⁹⁶ in which both groups appear to be competing involves, simultaneously, the claim by multiracial Americans that their constitutional rights have been violated by the black civil rights movement's charge that because they have at least one-drop of black blood they must be recognised as just black on the census and that in attempting to be recognised otherwise they are renegade blacks serving as rainbow saboteurs, and the claim by many black intellectuals and activists in the civil rights movement that the argument of the multiracial movement amounts to the claim that they are in some sense better than black. As we have seen, in the first case, the one-drop rule not only aggregates many multiracial individuals who fall outside the black/white binary into black identity, it also denies other multiracial individuals the right to acknowledge their white parent. In the second case, the one-drop rule is seen as allowing multiracial individuals pass, to in some sense distance themselves from the political discrimination which surrounds black identity. And to the extent that this distancing reduces the numbers of people identifying as blacks it is seen to threaten the affirmative action programmes which guarantee their right to equal opportunity. It is therefore in its effect on their ability to exercise fundamental constitutional rights that both sides identify the representational use of the one-drop rule as what we can say amounts to a form of hate speech. (In this respect, both claim the identity of the victim.)

To return to the role of outing in this, then, the important point here is that it corresponds to Derrida's understanding of the gift, which is to say that it engages a psychological circuit in which both the outer and the outed are constituted in and through the performance of outing itself. That is to say, the act of outing becomes hate speech because it limits the field in which the "outed" individuals can be recognised by the state

as political and legal subjects. One way of understanding how outing can take on this performative force is to extend the analogy which Butler draws between pornography and the Anita Hill case to the black treatment of multiracial people. As Butler notes, in cases of sexual harassment such as that claimed by Hill, "[T]he act of speech implicates an always already active and choosing being, a consenting subject whose no is always undercut by an implied yes."⁴⁹⁷ Extending this to the case of racial discrimination claimed by the multiracial movement, we could say that where the one-drop rule is used by black intellectuals to accuse multiracial Americans of trying to escape their racial identity, every denial of this by multiracial advocates is interpreted as further evidence that they are merely renegade blacks. In other words, the strategy of outing carries a performative force not because it is true but because it allows doubt to be cast on all future enunciations of multiracial identity. That is, it limits the field within which the speech of multiracials will be interpreted by the state. To rework a sentence used by Butler, we might say that in speaking, multiracial people display their agency; in speaking of race, they display their racial agency; hence, any claim made against the racialisation of their discourse from that position is refuted by their own speech acts.⁴⁹⁸ In short, just as Hill's accusation of sexual harassment was interpreted as a sign that "deep down" she was really "asking for it," by speaking of race at all multiracial people are made capable of self-deception, one in which their denial of black identity is taken by blacks as a sign of their pathology, their inability to come to terms with their true identity. Of course we could also write this narrative in reverse and argue that the use of the one-drop rule in black discourse is a sign of their own pathology, which from the multiracial perspective would be read as their inability to come to terms with the trace of whiteness in black identity. In this respect, it would be they who are outed.

Beyond this, we can also relate the use of the one-drop in the debate between the multiracial movement and the black civil rights movement to the relationship between theory and narrative, so that it is through the narratives which they attempt to impose on

the one-drop rule that each side attempts to open or close the space in which the identity of multiracial Americans can be theorised. That is to say, it is through the narrative meaning which is attributed to this term that each side attempts to bring the "problematic" which defines the debate over the census category under control. In this respect, theory is always a hateful form of speech because it closes out the space in which alternative narratives of identity can be spoken. Given this, the claim by the multiracial movement that they are more than just black represents an attempt to unmask the narrative historicity of theory present in the civil rights movement's interpretation of the one-drop rule. Their purpose, therefore, is to open up a space for their own narrative in that area which is closed off by the opposition between black and white identity, one which the conventional understanding of the one-drop rule legitimates.

In many respects, the path currently being taken by the multiracial movement corresponds to that already taken by black women. That is to say, where black women created a space for equal protection by identifying that gender and racial historicity which left them invisible between the black male who dominates the existing cultural and judicial understanding of racial discrimination and the white woman who dominates the same understanding of gender discrimination, so multiracial Americans are creating a space for their equal protection by identifying the monoracial historicity of the census categories which has left them invisible between black and white identity. In addition to this, both have had to negotiate their way around the idea that racial discrimination is defined by a monolithic black experience. In the case of black women this has meant dealing with the gender discriminations which go on within black identity between black women and black men; the kind which rendered Anita Hill unable to call on support from the black community because, as a black male, Clarence Thomas held the privileged site of oppression in the eyes of that community.⁴⁹⁹ As we have seen, in the case of the multiracial movement this has meant dealing with the issues which emerge through the interaction between monoracial and multiracial identity. As Hill's case suggests, both

black women and multiracial Americans threaten the symbolic capital which black leaders have invested in the black man as the authentic victim: the figure around which the claim for affirmative action has been built.

In this respect, the experience of multiracial Americans also re-energises those same questions of essentialism and responsibility with which black women have been faced in those situations where they have experienced domestic abuse from their black male partners, yet found themselves inhibited from responding decisively to this by their awareness of the wider structural issues shaping and subordinating black male identity. In other words, whilst the experience of multiracial Americans cannot and should not be compared to the experiences of black women such as Anita Hill or Desiree Washington, their experience of also appearing at an intersection of identity and difference in black identity raises those same questions of strategy which Gayatri Spivak raises in her discussion of subaltern politics. Therefore, when black women are the victims of domestic abuse by their black male partners because they are women, but recognise through their identification with black racial identity that this might be explainable in part because black men are themselves the victims of racism, the question is raised of which identification can and should command their allegiance.⁵⁰ The same situation applies to multiracial Americans. On the one hand, they sense that they are victims of black racial intolerance, yet at the same time they can recognise as people of colour that this is because of the limited possibility for equal opportunity which exists for blacks in a white dominated society. As Spivak suggests, there are no straightforward answers to these questions because the direction of obligation is not single and categorical but rather double and contradictory. Instead, they require the use of strategy, which in turn requires a level of critical consciousness and personal and economic empowerment which will often be lacking for those facing these situations. It may therefore be to the credit of multiracial leaders like Carlos Fernandez that their approach to the census issue allows black/white multiracials to still identify their blackness while claiming the title

multiracial. To some extent this appears to acknowledge that between black and multiracial identity there is no privileged site of deconstruction.

At the same time, exploring the connection between black women and multiracial Americans in their relationship to black identity also invites us to take a more critical approach. In this respect, the connection also ought to encourage us to question the gender assumptions which are perhaps at work in the black argument that multiracial Americans are pawns of white racists, since from the point of view of subordinate discourses white identity is always coded in terms of male gender. In this respect, we are perhaps faced with a situation where multiracial Americans have temporarily at least been assigned the role in black identity which has traditionally been reserved for black women, one where the suggestion that multiracial Americans are the pawns of white racists evokes the image of the white slave owner who appropriates the black woman and rapes her. This suggests, perhaps, that what might also be at stake in the black criticism of the multiracial census category is a repetition compulsion rooted in a history of black male emasculation at the hands of white men. In other words, the resistance of black leaders such as Gates, Jackson, and Mfume to the census category could be traced historically to the experience of slavery where black men were denied the right by white men to control black women.⁵⁰¹ Now it could be argued that the multiracial movement reworks that image because of the support which they have received from white political leaders such as Newt Gingrich and Tom Petri. As readers will have gathered by my frequent use of the qualificatory "perhaps" and "it could be," I am aware of where my own racial and gender identity is implicated in the historicity of this interpretation. I therefore welcome the critical deconstruction of this last paragraph at the same time as I offer it as a topic for critical reflection.

To conclude, in this first section I have focused on the racial politics in which multiracial identity has been engaged in its demand to have a multiracial category added to the 2000 census. Doing so helps us to understand what many multiracial advocates feel

they are resisting and how this resistance affects the interests of immediately recognisable groups, such as African Americans, whose access to anti-discrimination protection depends crucially on the numbers of individuals identifying as black. However, at the same time we have largely accepted the assumption made by Michael Omi and Dana Takagi that race can be separated from other issues of identity politics in the US. As I suggested at the outset of this chapter, we need to historicise the issue of race in the context of the limits to identification imposed by dominant cultural understandings of American identity and especially the place which sexual orientation has in this identity. This does not mean that we are now going to ignore race. Rather, the intention is to show how identifying with a particular racial identity such as multiracial already involves those making this identification in certain assumptions about sexual orientation in such a way that a dominant image of American identity is silently reproduced. What this involves - the cost of being recognised as multiracial in America - and how it happens is something which I shall try to explain in the next chapter.

CHAPTER ELEVEN

AN ACCEPTABLE "SUBJECT" FOR THE MORNING PAPERS!: THE APPROPRIATION OF MULTIRACIAL IDENTITY IN AMERICAN CULTURE AND THE POLITICS OF REPUDIATION

In order to advance beyond the racial limits which focusing on the debate between the multiracial movement and the black civil rights movement imposes, where our critical imagination simply moves back and forth between the polarities of monoracial and multiracial identity, we need to begin by recognising that, in a way which is not immediately obvious here, the multiracial movement, as it was seen to be articulated in the previous chapter by Carlos Fernandez, Charles Michael Byrd, and Lise Funderburg, works to support the idea of American individualism. This is because the one thing that interracial families and other groups such as the AMEA, Project RACE, and Interracial Voice are attempting to have recognised is the uniqueness and exceptionalism of being multiracial. Byrd takes this position when he argues that individuals of mixed-race need an icon, and Funderburg does the same thing by making the point that multiracial people remain part of that supposedly unmarked signifier "American." Perhaps more than any other reason, it is this argument which has facilitated the recent changes to the census and to state government forms. That is to say, although multiracial Americans are on the margin of America's understanding of racial identity, the narrative in which their demands are framed, which is their desire to have their unique individuality recognised, simultaneously reinscribes even more basic themes in this culture. Consequently, they can easily be reinscribed within the centre. However, it is here that the tensions within multiracial identity start to become apparent, where their demand to be included also operates within a structure where they exercise exclusions.

Therefore, in order to fully think the structure within which multiracial identity becomes possible, it is necessary to press against the borders of the question of racial identity and attempt to identify the repudiation upon which the multiracial challenge to monoracial identity is able to take place. To appreciate this we need to understand that questions of racial identity in America are already overdetermined by questions of sexual orientation because an atypical sexual orientation currently marks the limits of inclusion within the identity we refer to when we use the term "American." Stated formally, it is because they appear from within a moving structure of subject positions in which identity is only the after effect of difference, as in Spivak's notion of the subaltern subject-effect or Derrida's use of the term borderlines, those differences which represent exclusion at the level of racial identity can become moments of shared identification when their context is shifted towards questions of sexuality. As Carrie G. Costello points out, "Both the Order and Other are composed of shifting coalitions....[Therefore,] when the Order defines itself against the Queer Other, heterosexual Americans of all religions and colours may partake of unity."⁵⁰² It is therefore the identifications which they make at the intersection of race and sexual orientation which leave multiracial Americans simultaneously at both the margin and the centre of American identity. In other words, although multiracial groups are marginalised by and therefore resist the victimisation brought about by monoracial categories of identity, this opposition takes place within a society whose historical assumptions about heterosexuality lead multiracial identity to be recentred in the position of the oppressor.

In order to illustrate this, it may be useful to begin by considering one possible reading of the famous Supreme Court ruling on interracial marriage. Here we might start by noting that even though the Supreme Court's decision in *Loving v. Virginia* made interracial marriage legal in the US, it is still arguable that until multiracial identity is recognised in federal documentation the governmental mandate set out in this 1967 ruling has not been fully carried out. In this respect, what the multiracial movement is

attempting to do is to have the offspring of relationships between people of different races identified as a category of person in US law, something which I would argue was already strongly suggested by the ruling in Loving.

The point which I want to make through this reading is that by interpreting the recognition of multiracial identity as an extension of the Loving decision, we can see that the debate over the multiracial category on the census is essentially still a debate about the most the legitimate form of *heterosexual* relationship: monoracial or multiracial. The key point here, I would suggest, is that the argument can be made that until multiracial people are recognised on the federal census interracial marriage must still carry a certain stigma of illegitimacy. Thus, to repeat the point, the recognition of multiracial identity is really about confirming the legitimacy of the heterosexual relationship between people from two separate races. In other words, given its judicial reference back to the Loving decision, we can perhaps see that the debate between monoracial and multiracial identity is one which is structured around and which depends on the repudiation of gay and lesbian relationships in favour of a heterosexual norm.

Another way of putting this is to say that the Loving decision provides us as readers with an already naturalised understanding that the multiracial subject is also heterosexual. It is because multiracial identity is linked so closely in our political imagination with the right of blacks and whites to marry across racial lines that we not only forget that this right only exists for heterosexual couples, in addition we also assume that the offspring from these relationships cannot be other than heterosexual. In other words, as the Loving decision shows, it is the structure of the representational context which, usually by its very ordinariness but also sometimes by its distracting novelty, has the ability to narrow our field of critical attention and thereby place some understandings beyond question. Therefore, when we are presented with images of individuals of mixed-race the notion of racial mixing brings into play a heterosexual coding which marks those individuals as straight. That is to say, we forget the imaginal leap which must be

made between the heterosexual image which accompanies interracial parents and the sexual orientation of their children.

If the Loving decision offers one example of this, then another is provided in the image of a racially mixed woman who appeared on the cover of Time magazine in Fall 1993.⁵⁰³ Devoted to what it described as "America's Immigrant Challenge," the magazine's argument was that the woman depicted on its front cover was a proto-typical likeness of the racial identity of the average American in the twenty-first century. Its point here was that through accelerating immigration interracial relationships were in the process of forcing America to redefine itself away from its traditional black/white stereotypes. We can read this text on a number of levels. Most obviously, I think, its aim is to reassure an American public concerned by television newsreels of Mexican migrants entering illegally into the US with a more benign image of its consequences.⁵⁰⁴ In this respect, by deploying the image of the smiling racially mixed woman it helps to maintain an imaginary boundary between the Mexicans "out there" and the immigrants "in here" by reasserting the melting-pot image of an America able to successfully assimilate newcomers.

However, the text can also be read for its ability to maintain an imaginary boundary between those individuals who are *in* here and those who are *outside* in here. On the one hand, as I shall reiterate later in this chapter, it needs to be read as a text generated not by a racially colourless society but one which is dominated by a white racial norm. In this respect, we need to take notice of the fact that in addition to being female and smiling the woman in the cover photo is also almost white in colour; white enough to reinforce the white/black racial boundary which the magazine wants to claim is being deconstructed by interracial marriage. In other words, the body of the proto-typical multiracial subject is appropriated to reassure Time's readers that whatever happens in the future with immigration and interracial marriage this future will remain white.⁵⁰⁵

On the other hand, however, and this is my specific point right now, it also serves to reassure readers that the future will not correspond to their other current phobia, an America whose traditional values will have been swept away by a tide of gay and lesbian lifestyles. In other words, the smiling woman represented on the cover page creates a imaginary space which associates multiracial identity with white racial identity and heterosexuality in the minds of the magazine's readers. The point here, then, is that because of its representational context, one in which readers are initially put into a mild state of anxiety by the suggestion of an external threat, the magazine's use of the multiracial subject is able to make a series of assumptions which readers, now looking for reassurance, are happy to leave uncontested.⁵⁰⁶ Thus, we assume that all interracial relationships are heterosexual, that homosexuals do not have interracial relationships, and most of all that multiracial individuals are all straight. What effect would it have on the reassuring impact of the magazine's story, for example, if we were to learn that the smiling, almost white woman in the cover picture was a lesbian, or a bisexual, or even a man in drag? This, I think, is the decisive question here.

Strikingly, Time is not the only mainstream US news magazine to appropriate multiracial identity in order to shore up the racial and sexual boundaries of American identity. In April 1996, US News and World Report ran an article which introduced its readers to the new picture of Betty Crocker which food manufacturer General Mills will use to represent its baking products.⁵⁰⁷ The article reviews the previous five Betty Crockers, which have all served at different times as archetypal images of American female identity. As the article notes, Betty Crocker first made her name during the Depression by helping homemakers make their money stretch further. During the Second World war she won awards for suggesting ways to cope with shortages, and in 1945 she was named America's second-most-admired woman after Eleanor Roosevelt. However, as the magazine points out, America is now one-quarter non-white and shifting rapidly: "Martinez is now the most popular name in Major League Baseball, and there are more

Nguyens in the San Jose, California phone book than Joneses." It is because of this that General Mills has introduced this new photo image of Betty Crocker. As the article describes her, she is "younger and darker and more alluring than her predecessors. While her racial and national origins are left deliberately vague, she is definitely not a blond, blue-eyed northern European." As the magazine adds, "In fact, she looks a bit like Marisa Tomei and Al Pacino, actors who can play any ethnic role from Italian to Mexican to Greek."

However, while the new Betty, who incidentally has been renamed Ashley, is not a "blond, blue-eyed northern European," the one racial identity which she could not play in a movie is black, and given her association with Marisa Tomei and Al Pacino the last thought that might come to a reader's mind is that she might be a lesbian. Of course, her insertion within the pictorial history of Betty Crockers has already ensured that this heterosexual image is unambiguously transmitted. As the article suggests, "you might think of her as Ashley Martinez, who happened to marry a Crocker." However, what is perhaps most interesting is the close similarity which Ashley Crocker bares to the smiling, almost white young woman who represents Time magazine's idea of "The New Face of America." Indeed, like Time, General Mills used computer imaging to combine the pictures of the seventy-five winners of their "Spirit of Betty Crocker" essay contest to create their own multiracial Betty/Ashley Crocker. I think the point hardly needs to be emphasised that here we have another example where multiracial identity has been appropriated by the mainstream American press to reinforce dominant images of American identity. Like the almost white woman on Time's front cover, the new Betty Crocker will reassure American shoppers that whatever happens in the future to America's racial identity, this future will still be overwhelmingly white and certainly heterosexual. Taken together, then, what I think these three texts - the Loving decision and the articles run by Time and US News and World Report - illustrate is the point made

by Janet Halley which we noted in chapter six that in the US "the assumption of heterosexuality applies in virtually every social interaction."⁵⁰⁸

What I hope to have shown here is that although multiracial Americans might see themselves as marginalised within the current black/white interpretation of "normal" racial identity, they are in fact inscribed within the centre when it comes to the interpretation of "normal" sexual identity. It is only by looking at the intersection of race and sexual orientation, therefore, that we can give proper attention to Omi and Takagi's suggestion that we need to interrogate how groups are constructed and represented. For, in contrast to Omi and Takagi, location is never just "racial location." Instead, as Chandra Mohanty has suggested, it is a "temporality of struggle" in which the ambivalences between different subject positions, including race and sexual orientation, are brought into play. Consequently, minority groups are never simply the unjust victims of intolerance. Rather, since one subject position appears on the borders of another and thus carries a normative evaluation of the differences at work within it, a minority identity is always already engaged in a relationship of oppression even as it identifies itself as a victim of discrimination. In the case of the multiracial movement, therefore, the argument of the black civil rights movement that they are naively supporting the right wing attack on people of colour may be less significant than the fact that the debate between them silently supports the right wing attack on gays and lesbians.

In this respect, it is important to take note of the response of both Democratic and Republican political leaders. In the case of the Democrats, it is noticeable that after initially responding enthusiastically to the idea of a multiracial category on the census, President Clinton has moved away from the idea; not because it carries an implicit repudiation of gay and lesbian sexuality, unfortunately, but because of pressure from the black civil rights movement.⁵⁰⁹ In contrast, however, as we have seen, Republican leaders such as Newt Gingrich have consistently backed the proposal. Gingrich offered testimony to the 1997 Interagency Committee set up by the OMB to examine the question of

changing the structure of the census,⁵¹⁰ and more recently, as we noted in the previous chapter, in response to Clinton's new race initiative he wrote that a multiracial category could be a first step towards phasing out "the bounded, divisive, and rigid classifications of Americans as "blacks" and "whites" or other single races." The point which I want to make here is that as a spokesman for the American right, Gingrich's support has to be understood on the basis that the multiracial movement is working within a heterosexual norm, so that they both have the same political subject in mind when Gingrich argues that "Ultimately, our goal is to have one classification - American."

What I want to argue here is that, ultimately, leaders such as Gingrich can support the multiracial movement because it provides a way of relieving the anxiety of white, heterosexual, middle class America. On the one hand, whites can identify with the interracial families because their demand is not for political preferences but for recognition of their children's own individuality.⁵¹¹ Thus, in relation to black identity they no longer represent people of colour, but instead the ethos of American individualism which whites have traditionally used as a buffer against positive discrimination in favour of blacks. Within this, they of course allow white America to rework the racial boundaries of the nation to leave black identity still on the margins, something which can be foreseen in Spivak's account of tokenism.

Here Spivak suggests that admitting new members into the structure of a social norm reinforces the basic relationship between the centre and the margin. She addresses this point in her discussion of what she calls the consistency loop. As this suggests, the limits within which difference is tolerated are always already those which reinscribe an existing norm. In this respect, the use of the token is what masks the singularity from which the norm appears and therefore allows it to exist as an object of socially legitimate knowledge. Thus, in the case of tolerating gender differences she suggests that tokenism is a false power which masculine society offers to a few women who think like men. The illusion that justice based upon merit actually prevails is thus a covert way of maintaining

a masculine status quo. As Spivak puts this, "The putative centre welcomes selective inhabitants of the margin in order better to exclude the margin."⁵¹² Therefore, she argues that the relationship between the centre and the margin is "intricate and interanimating," and based upon the principle of repressive toleration.⁵¹³ As she notes, "The strongest brand of centralisation is to allow in only the terms that would be consistent anyway, or could be accommodated within an argument based upon consistency."⁵¹⁴ That is, the principle of consistency allows the centre to turn toleration into a way of repressing the margin. Or, following William Connolly's point, tokenism becomes a way of being consistent in the face of a margin which the centre would prefer not to tolerate, but which the norms which constitute its structure force it to admit.

Going back to the analogy with Asian Americans, in the study we referred to briefly in part three, David Palumbo-Liu noted a similar strategy in the representation of a non-white minority in press photos taken during the Los Angeles riots. As he notes, at the intersection of the photo and its caption white America was able to appropriate the bodies of Asian Americans to reinscribe the exclusions of an American identity marked by individualism, free enterprise, and the defense of private property at that very moment when the riots challenged their legitimacy.⁵¹⁵ Thus, just as interracial families become token whites when they demand to have the individuality of their children recognised on the census, so the Asian Americans represented in reports of the riots become token white Americans when their representational context allows them to be opposed to blacks. In both cases, allowing a minority to momentarily cross the boundaries of race becomes part of the right's wider strategy of moving away from the distribution of preferences based upon racial discrimination. On the other hand, however, homophobic heterosexuals can also identify with multiracial Americans because their sexual values reflect those of the traditional middle class American family.

To illustrate this second point we can follow David Palumbo-Liu's example and review a short selection of photos representing interracial families and their multiracial

offspring in the mainstream American press. Just as the photo-caption in the L.A. Times inscribed the economic values of white America on the bodies of Asian Americans, so recent photo-captions in other leading national newspapers and magazines have inscribed the values of the traditional middle class American family on the bodies of their multiracial subjects. Thus, in The New York Times we find a photo of Edward Cooper and his wife Barbara McIntyre with their son Ethan as they take a family walk along a well kept residential sidewalk in Portland, Oregon.⁵¹⁶ Like any responsible parents, Cooper and McIntyre have ensured that Ethan, who is cycling as they walk, has a cycle helmet. Ethan thus assimilates nicely as the reader's eye moves past the family in the foreground and into the background where other local children are also wearing cycle helmets. We also find that Edward and Barbara own their own business, a mail order company, which encourages the reader to associate them with a middle-to-upper-middle-class identity. In addition, in the picture both parents are seen wearing eyeglasses, which in this context encourages the reader to make associations with privileges such as a college education, which in turn reinforces the other signs of responsibility to which the photo already gestures. Perhaps most importantly, the caption silently affirms Edward and Barbara's commitment to their son's individuality in that they have named him not Ethan Cooper or Ethan McIntyre but rather Ethan McCooper.

Similar images of the traditional family structure are also reflected in Time magazine, where we find box sets of family photos each of which highlight and reinforce some dimension of this structure.⁵¹⁷ Thus, for example we find that Reuben and Marna Cahn overcame their families' resistance to their interracial marriage with the birth of their first son, Aaron. Again we find that Reuben is the son of parents who were educated upper-middle-class Americans, the co-deans of the Antioch School of Law. Meanwhile, the marriage of Kathleen Hobson and Atul Gawande was based upon a relationship found in a shared middle-class upbringing in tight-knit families, their Stanford education, and their love of intellectual pursuits. Finally, Candy Mills and Gabe Grotz are depicted with

their children whom they want to enable to define who they want to be. Just as importantly, a photo-caption in U.S. News and World Report identifies the Crafton family of Michigan.⁵¹⁸ Under the heading of "Don't you dare list them as 'other'" we find that Kim Crafton led a successful fight to have "multiracial" listed as a category on statewide forms. Together with its immediate caption, the photo depicts the Crafton's as a homeowning family which have achieved their "True identity." Here Kim Crafton's eyeglasses play an important role in again centering the reader's interpretation of the photo, since they again direct the viewer's imagination to a wider set of cultural metaphors.

If I seem to be stressing the ability of eyeglasses to act as cultural signifiers, then it is because in the final photo here Linda Chandler and Stafford Gregoire are represented as both wearing eyeglasses and as studying for graduate degrees in English literature.⁵¹⁹ The point here is that this is all the information which we as readers are given to construct our interpretation of the photo, and just as importantly to make the connection between the photo and the fact that they moved to Berkeley, CA, so that their daughter Chandler will be able to be near other multiracial families. And again, like Edward Cooper and Barbara McIntyre, they show their commitment to the individuality which comes with their child's mixed heritage by naming her Chandler Gregoire, thus signifying the presence of both parents without reducing her to either. Thus, they reinforce the idea that the parents of mixed race children are both educated and responsible individuals who can be identified with the values of the traditional middle-to-upper-middle-class family. What I want to stress here is that I am not attempting to evaluate these interracial families and their multiracial offspring but rather the way in which the press has represented them through the association of particular signifiers of identity with the photographic image. The important thing to note here at one level is how the text-photo combination serves to narrow our understanding of these people into particular narratives, so that at a second level they project out a wider mental image of the

interracial family as a stable middle-to-upper-middle-class institution which is based upon the principles of education, achievement, parental responsibility, and above all, though it is never mentioned, heterosexuality.

As Palumbo-Liu notes, for Roland Barthes, who was one of the first writers to consider the way in which modern power operates through the photographic image, the press photo inverts the traditional relationship between text and image. The image no longer illustrates the words; instead, today, the text loads the image with a cultural and political imagination. Palumbo-Liu suggests that a key consequence of this has been that the photo acquires the ability to gesture beyond itself since its source of signification now lies outside its pictorial boundary. He gives the example of Foucault's analysis of Verlasquez's painting Las Meninas in which the orientating point of view in the picture, the "human subject," is implicated everywhere but is in fact radically absent from the painting itself. The point here is that for Palumbo-Liu this offers a way of reading the photo of the LA riots which he is attempting to analyse, so that what becomes important in this picture is the way in which the dominant ideology of America is inscribed within it yet made invisible by the immediate subject of the photo which serves as its stand-in. In the terms which we have used before in this thesis, there is a simultaneous movement of substitution and displacement in which the displaced figure remains internal to and at work within its substitute. Thus, as we noted above, it is white America which orientates our reading of Palumbo-Liu's photo even though there are no white Americans actually present in the photographic image. As he says, we need to explore how the photo serves as one of "the mechanisms by which the dominant ideology comes to account for, pacify, and use to its own advantage a seemingly inexplicable event, while apparently standing outside and beyond violence."⁵²⁰

Thus, in the context of the debate between multiracial advocacy groups and the black civil rights movement, the way in which the photo image is loaded by the accompanying text with dominant signifiers of American ideology means that interracial

families and their multiracial children have become a site with which white, heterosexual, middle class America can comfortably identify, thus relieving its anxiety over illegitimacy, welfare mothers, deadbeat dads, and abortion rights, most of which are conjured up as the dominant images of African Americans. As Nadine Taub has suggested, "the debate about "welfare reform" is in part a debate about the supposedly debased culture of African Americans, who thanks to the welfare state do not want to work for a living and have indiscriminate sex without the benefit of marriage at taxpayers' expense instead."⁵²¹ In other words, multiracial individuals and interracial families are appropriated as a site where "mainstream America" can find reassuring images of what it would like to read about in its morning papers!

Further evidence of this strategy of appropriating the bodies of interracial families is suggested by Deborah R. Grayson's account of *Johnson v. Calvert*, a surrogate custody case where the question of the right to custody was turned into a site where the politics of American identity were played out at the intersection of press and court interpretations of black and multiracial identity.⁵²² Here Grayson shows that the failure of both the courts and the press to consider or report the racial identity of Crispina Calvert, the Filipina American genetic mother, and the explicit detailing of gestational mother Anna Johnson's black identity and lifestyle, worked to deracialise Calvert's body in such a way that in the context of her juxtaposition to Johnson she passed as white in the mind of the court and newspaper readers. The result of this was that Johnson could be subordinated within many of the more general metaphors through which the racial, class, and sexual hierarchies of what is understood to constitute the family and motherhood in American identity are reinscribed. As Grayson notes, "[T]he portrayal of Johnson in the courts and in the media as a fraudulent welfare mother, con artist, and extortionist plays on the beliefs long held by the public that black women are "less fit mothers, less caring mothers, and less hurt by separation from their children" than nonblack women."⁵²³

In other words, by ignoring Crispina Calvert's racial identity and publicising Anna Johnson's black identity, the narrative on which the custody case was represented to the court and the viewing public, and upon which the custody decision was ultimately decided, became a way of policing the boundaries of the American family. The point here is that the silence of the court and the press on Calvert's Filipino background allowed the family represented by Mark (a white American) and Crispina Calvert to be read as a white rather than interracial; in much the same way as the press reports of interracial families campaigning to change the census to include a category for multiracial have. Here it was the way in which the text of the report loaded the picture with key images of white, heterosexual, middle class America which led us to forget that most of the time one of the figures in the photo was actually black. As Grayson points out in her analysis, "Gestational mothers who renege on their contracts - poor mothers, lesbian mothers, black mothers, and other mothers thought to be functioning outside middle class, father-centred families - often find themselves without support or legal recourse in child custody disputes. Courts consistently rule against these groups of women, favouring instead *configurations of the family that fit the nuclear model of white middle-to-upper-middle-class heterosexual couples.*"⁵²⁴

One of the benefits of reading Grayson's account of the Calvert custody case alongside our reading of mainstream press photo-captions is that it helps us to understand that it is not simply a dominant image of American identity but more specifically the traditional image of the American family that the representation of interracial families in these press reports has served to support. As Carrie Costello has suggested, "Control over intimate and familial relations has been central to hegemonic control throughout American history, although the objectified Other has changed over time."⁵²⁵ As she points out, for much of this history the focus of this control has been on the racial limits to the family, so that it was once the prohibition of interracial families which supported the dominant image of the family. Now, however, she suggests that it is "Bisexual,

lesbian, and gay people [who] currently comprise a paradigmatic example of an Other subject to social control through definition of the family."⁵²⁶ The irony of the present situation, then, is that within the press and the law the once prohibited interracial relationship has now been appropriated to support the current prohibition of other understandings of the family.

In reference to gays and lesbians and their role as parents, Costello shows that in the language of contemporary social conservatives the family is associated with the preservation of "traditional values" centred upon polarised gender roles, so that to stray outside "the heterosexual nuclear uniracial family" is still considered a threat to democracy.⁵²⁷ In the language of the courts the family is also seen in these terms, where the response to gay or lesbian parenting has usually been that "Substituting two male homosexuals for 'parents' does violence not only to the literal definition of who are parents but offends the traditional concept of what a family is."⁵²⁸ In this respect, as we saw in chapter six, the main judicial ruling regulating the relationship between gay men and lesbians and the American understanding of the family has been *Bowers v. Hardwick*. By prohibiting same-sex relations per se, *Bowers* means that same sex marriages are then banned as well, which in turn means that children are denied to gay and lesbians parents because these parents are unmarried.⁵²⁹ As Costello points out, the law catches gays and lesbians in a circular and totalising logic whereby they are excluded from establishing parental families because they reject an image of the family which the law and the dominant culture defines against them.

As Costello shows, the result of the *Bowers* decision is that in those divorce and post-divorce custody cases, which comprise 59% of all civil litigation concerning gay men and lesbians, judges are free to rely on homophobic beliefs in ordering a change of custody when the custodial parent at the time of the divorce moves in with a person of the same sex.⁵³⁰ However, as Costello also shows, the homophobic belief that homosexuals seduce children and that children brought up in gay and lesbian households

themselves become gay or lesbian fails to account for the fact that the great majority of adult sex abuse of children is committed by men against girls and that the majority of gay men and lesbians were themselves parented by heterosexuals.⁵³¹ As she points out, what the courts perhaps fear is not the effect which a homosexual family structure would have on children, but rather the effect which children raised in this environment would have on traditional homophobic values.⁵³²

At this point we can perhaps say that by depicting the family structure associated with multiracial identity in terms of established family units, responsible parents, legitimate children, and no hint of abortion in the air - what Grayson calls "the nuclear model of white middle-to-upper-middle-class heterosexual couples" - the press and the courts have already done what Jon Michael Spencer has said would be the consequence of recognising multiracial identity in America, that is, of granting them the census category which would then allow them to petition for wider legislative recognition. Drawing on the lessons which he believes are to be learned from the experience of the coloured population in South Africa under white majority rule, Spencer argues that if a multiracial identity were established in the US it would result in multiracial Americans following their coloured equivalents in South Africa in terms of being "co-opted" by the white minority in order to serve as a "buffer zone" against blacks.⁵³³

In particular, Spencer notes that if whites in America were to see themselves becoming minority representatives in a future government due to changing demographics, they could do as the white minority government did in South Africa and allow some multiracials to reclassify as white. As he adds, this is not so far fetched since Arabs and Jews, who are both Semites and not from the European-American tradition upon which the dominant image of white identity is based, are already classified as white. In this respect, it is also useful to add that one Harvard sociologist who has been advising the federal government on multiracial issues has suggested that in the future we will see a greatly expanded white category on the census rather than the proliferation of

more particular categories.⁵³⁴ My point here is that if we read the photo-text-captions of press reports and the judicial rulings in cases like Calvert where multiracial Americans and their interracial families are involved, we can see that this "co-opting" is already taking place and that multiracial Americans are already being deployed as a "buffer zone" against blacks (and other Others who Spencer does not consider) in the American political imagination.

However, in order to fully appreciate the extent to which the representation of interracial families by the press and the courts has served to reinscribe dominant narratives of the American family, it is useful to explore those moments in the press and the law where either the identity of interracial families is itself appropriated by the currently paradigmatic Other or where the courts momentarily redefine the family to include the partnership arrangements of that Other. Thus, in one example of the first kind which appeared on the letters page of the San Francisco Chronicle, Kate O'Hanlan (M.D.) pointed out that while she understands and supports the campaign for a multiracial census category, it is important to recognise as well that there are ten times as many gay men and lesbians who are still not allowed to marry and who are not formally recognised on the census either. As she concludes, "I applaud the counting of multiracial individuals and ask the same courtesy for gay men and lesbians: that we be allowed to marry our beloved one, and someday even be counted in the census as the couples we are."⁵³⁵ As we can see here, it is only at those moments when the terms of multiracial inclusion are appropriated by gay men and lesbians that the heterosexual norm which centres the legal recognition of the interracial family and makes it acceptable to the dominant culture is revealed. In other words, interventions such as Kate O'Hanlan's show that at the intersection with sexual orientation there is a moment of displacement in the recognition of multiracial identity which is only tentatively papered over by its representation in the press and in the courts.

In another example, Mayor Willie Brown of San Francisco also argues, in this case in an American Bar Association debate in August 1997, that "It wasn't long ago that laws prohibited interracial marriage. The Supreme Court overturned such bans in 1967, ruling that mixed-race couples deserve the same protection as others. Today, the same application of the law must be made in reference to people who wish to engage in marriages of the same sex."⁵³⁶ The point here is that it is only when the same arguments which were made by interracial couples are appropriated by those gay men and lesbians who currently comprise the Other to American identity in order to gain the same privileges, that we realise that it is the exclusion of those groups from both the identity of the interracial family and the multiracial subject itself which allows these families to argue for recognition on the census.

However, perhaps a more interesting example is where the courts have momentarily redefined the identity of the American family to include both interracial partnering and homosexual identity. In this case two lesbians, Sue Pavlik and Millie Jessen, who are white and Latina, were awarded custody by a Superior Court judge in Alameda County, California, of Eric, an African American boy, who had been given up for adoption by his father after his mother had died from the AIDS virus which she had passed onto Eric.⁵³⁷ In 1989 when this case was ruled there were only five gay or lesbian couples in the US who were recognised legally as joint parents. Although the interracial nature of Pavlik and Jessen's relationship did not affect the court's decision, they do represent a limit situation where the interracial family no longer serves to reinforce the exclusion of gays and lesbians from the legally authorised definition of the family. Of course, Pavlik and Jessen are not allowed by the law to marry, but this ruling allowing adoption simply confirms the way in which the legal understanding of marriage supports certain dominant political interests centred around the definition of the family. As Costello points out in her reference to this case, "California's administrative policy

against adoption by unmarried couples, including gay couples, is "irrational" because it subordinates children's welfare to the traditional institution of marriage."⁵³⁸

In the light of this analysis we are perhaps able to look a little more critically on Carlos Fernandez's argument that the multiracial, multiethnic community represents a "socially unifying force" which has "the potential to become the stable core around which the ethnic pluralism of the US can be united."⁵³⁹ The point here is that because the multiracial movement is still working within a framework which considers racial politics alone, which is to say that its view of identity is monological, it comes to approach questions of social conflict in terms of the creation of a transcendental moral person who can resolve existing patterns of difference. For Fernandez and others, the multiracial subject is this person. As he proposes, "We are convinced that our community is uniquely situated to confront these issues because of the special experiences and understanding we acquire in the intimacy of our families and our personalities."⁵⁴⁰

The danger here is that by isolating race from questions of sexuality, interracial families and multiracial identity are turned into a privileged site of deconstruction. Therefore, when the argument is made that these families and this identity represent a "socially unifying force," we need to be aware of the *force relations* which provide it with its unity. The crucial point here is that I am not using sexuality as an external aporia, and thus creating another privileged site of deconstruction. Rather, as I have tried to show, the exclusion of gay and lesbian sexuality is internal to the possibility of granting equal recognition to the multiracial movement, since both heterosexuality and homosexuality are points of identification which can be represented in the signifiers "interracial family" and "multiracial American." Therefore, from the point of view of lesbians like Sue Pavlik and Millie Jessen who are attempting to provide an interracial family unit or from the point of view of multiracial Americans who are also gay or lesbian the recognition of multiracial identity by a culture whose dominant norm is heterosexuality can only be a highly ambiguous achievement.

Consequently, when members of the multiracial movement like Carlos Fernandez suggest that this subject might become the "stable core" for racial identity, it is helpful to keep in mind Judith Butler's reflection on standards of universality. As she suggests, "Indeed, it seems important to consider that standards of universality are historically articulated and that exposing the parochial and exclusionary character of a given historical articulation of universality is part of the project of extending and rendering substantive the notion of universality itself."⁵⁴¹ Her point, which is remarkably close to Derrida's refusal to denounce the classical emancipatory ideal, is that the universal functions precisely because and in fact through the process by which it cannot be realised. As she adds, "The excluded, in this sense, constitute the contingent limit of universalisation. And the universal, far from being commensurate with its conventional formulation, emerges as a postulated and open-ended ideal that has not been adequately coded by any given set of legal conventions."⁵⁴²

The point here is that the postulation of the interracial family and multiracial identity as a kind of universal standard for American ethnic pluralism operates as a parochial form of censorship because the conventions of its formulation exclude certain forms of speech such as gay and lesbian sexuality a priori as its contingent limit. As I noted earlier, it is only by transgressing other systems of difference that any identity is able to produce the normative evaluations which allow it to centre itself. Therefore, by isolating subjectivity along such lines as race and then taking localised norms as the signs of a transcendental moral person, multiracial advocates create, to borrow Butler's terms, a performative contradiction which ironically and unwittingly stalls the open-ended process of universalisation itself.

It is in this context, therefore, that we need to be aware of the critical limitations of evoking the "analogy" of interracial marriage as a justification for the legalisation of marriages between gay and lesbian couples. This analogy has indeed been evoked recently due in part to the intersection of two events. On the one hand, the thirtieth

anniversary of the Supreme Court's decision in *Loving v. Virginia*, and on the other, the decision in the Hawaiian Supreme Court that could make gay and lesbian marriages legal across the US. Hawaii is one of the few states whose constitution has an equal rights amendment. This allowed the Court to rule in the case of *Baehr v. Miike* that the refusal to recognise same-sex marriage was unconstitutional on the grounds that it represented sexual discrimination. Therefore, rights which were applied to heterosexuals had to be applied equally to homosexuals.⁵⁴³ The point here is that under the clause in the federal constitution requiring that states give "full faith and credit" to the rights established in other states, this right is expected to become national so that gay men and lesbians can travel to Hawaii and then return to their home state as a married couple.⁵⁴⁴

In this respect, groups supporting the right of gay men and lesbians to marry have drawn upon the anniversary of the Loving decision to invoke a historical parallel which locates this right within what Kim Kirkley, a lawyer with the Lambda Legal Defence Fund, has called the "larger context of an ongoing civil rights struggle."⁵⁴⁵ In doing so, they have looked to set current criticism of gay and lesbian marriage within the same tropes which were used to deny the right of interracial marriage before 1967. That is to say, groups supporting this move have attempted to subvert the prohibition of gay and lesbian marriages by drawing parallels between the racially based criticism made in the 1960's and the sexually based criticism made today. In doing so, the proven unjustifiability of one is used to argue for the present unjustifiability of the other.

Thus, in an article entitled, "Civil Rites: Arguments against same-sex marriage mirror those that kept the races apart," Deb Price cites the following narratives common to both struggles: "God objects. Children will suffer. The majority will be tarnished. A state may refuse to recognise any marriage that offends it. Most states and most people are offended by such unions. And the fourteenth amendment guarantee of equal protection does not apply to them."⁵⁴⁶ In another interesting article, Eric Zorn in the Chicago Tribune offers an essay based upon twelve statements which restate arguments

against interracial marriage made from 1823-1964, only he does so by substituting gay and lesbian signifiers for those of race. As Zorn shows, issues such as the degradation of conventional marriage, social contagion and pollution, a defiance of natural instincts, the encouragement of effeminate behaviour, and the inability to reproduce the human race, provide an intertextual narrative for reading, and as he hopes deconstructing, the morality of current criticism.⁵⁴⁷

Perhaps of greater interest, however, given the context of our earlier analysis of her work, is where advocates of same-sex marriage have used the work of Hannah Arendt to draw an analogy between interracial marriage and same-sex marriage. The focus of this is an article published in 1959 by Arendt in which she controversially argued that in passing anti-segregation laws Congress had made the error, which we have seen is central to her critique of modern politics, of placing social equality over political equality. That is to say, Arendt maintained that the right to marry was a basic political freedom which should come before other social freedoms such as equal access to education. As she put it, "with respect to unconstitutional legislation, the Civil Rights bill did not go far enough, for it left untouched the most outrageous law of Southern states - the law which makes mixed marriage a criminal offense. The right to marry whoever one wishes is an elementary human right compared with which "the right to attend an integrated school, the right to sit where one pleases on a bus, the right to go into a hotel or recreation area or place of amusement, regardless of one's skin colour or race" are minor indeed."⁵⁴⁸ It is therefore Arendt's suggestion that the right to marry whoever one wishes is an elementary human right which advocates have used to form an analogy between interracial marriage and same-sex marriage.

Taking the above section of the article as his point of departure, Andrew Sullivan argues that marriage is a formal public institution which is necessary if the private person is to be transformed into a public citizen. In this respect, he argues that this is why the right to marry is central to homosexual equality. As he puts it, "Homosexuality, at its

core, is about the emotional connection between two human beings. And what public institution is more central - more *definitive* - of that connection than marriage. The denial of marriage to gay people is therefore not a minor issue. It is the entire issue....It cuts gay people off not merely from civic respect, but from the rituals and history of their families and friends. It erases them not merely as citizens, but as human beings."⁵⁴⁹

Despite its apparent rhetorical power, however, the limitation of reasoning by analogy is that it makes the same mistake that Carlos Fernandez makes. That is, it attempts to turn the example of interracial marriage into a privileged site of deconstruction. As a result, we need to explore that which is disciplinary as well as emancipating in the use of the Loving decision as an analogy for the circumstances of gay men and lesbians. This has to do with the nature of reasoning by analogy itself rather than any limitations which may or may not be at work in the terms under which the analogy is made. Here we can begin by turning to Mary Eaton and her comment that "Through its preservation of difference, analogical reasoning inserts a space between the things analogised that may be narrowed according to degrees of logical correspondence, but remains ultimately unbridgeable."⁵⁵⁰ The point which I want to make here is that reasoning by analogy depends upon presupposing the original separation between subject positions such as race and sexuality, the same separation which Carlos Fernandez makes in his argument. Indeed, reasoning by analogy only works by making the thing which serves as the basis of the analogy a privileged site of deconstruction. As Eaton argues, the inability to finally dissolve the space between the things analogised makes the recognition of "cross-identification" and "consubstantial oppression" (the overcoding of the victim with the identity of oppressor such as we find in the "subaltern subject-effect") "utterly unintelligible." As she points out in her research, it turns the black homosexual into an oxymoron because it cannot acknowledge such cross-identifications.

Thus, the difficulty with using the analogy of the Loving decision to support the recognition of gay and lesbian marriage is that the deployment of the analogy is itself an

act which participates in the disciplining of multiracial Americans whose identification with being multiracial includes being gay or lesbian or of gay men and lesbians who would form interracial partnerships. That is to say, by drawing a connection between race and sexual orientation the analogy presupposes that they originally refer to two separate political subjects or two types of family unit, so that although there may be "degrees of logical correspondence" they must remain "ultimately unbridgeable." This helps us to also see the limitations of those recent attempts by legal scholars to deploy "the miscegenation analogy" to support the recognition of gay and lesbian identity.⁵⁵¹ As the binary structure of their narratives suggests, where they are always working between race and sexual orientation they are indeed unable to account for the black or multiracial homosexual or for the gay men or lesbians who fall in love across racial lines, so that this narrative is something which unwittingly participates in the policing of those identities. Rather than finding a privileged site of deconstruction, therefore, we instead have another example of where the victim never finally gets to speak.⁵⁵²

The problem here, of course, is that analogical reasoning accepts the legitimacy of the ontic/ontological difference and in this respect encounters the difficulties which we have identified with theory as a strategy of critical analysis. That is to say, by limiting itself to the concerns found along the ontic difference, the differences between beings with respect to their Being (in this case the differences between their Being-racial or Being-sexual beings), analogical reasoning takes part in that forgetting of the question of Being which defines metaphysics itself. Instead, as I have tried to show here, it is only by thinking the limits within which the analogy of interracial marriage can be brought into play that we are able to recover this question and return the term "critical" to the task of critical analysis. In other words, it is the repudiation of gay and lesbian multiracials or gay men and lesbians who find their loved one across racial lines which provides the everyday space from which both sides of the analogy we have explored here can be sent out.

FIGURES FOR CHAPTER ELEVEN

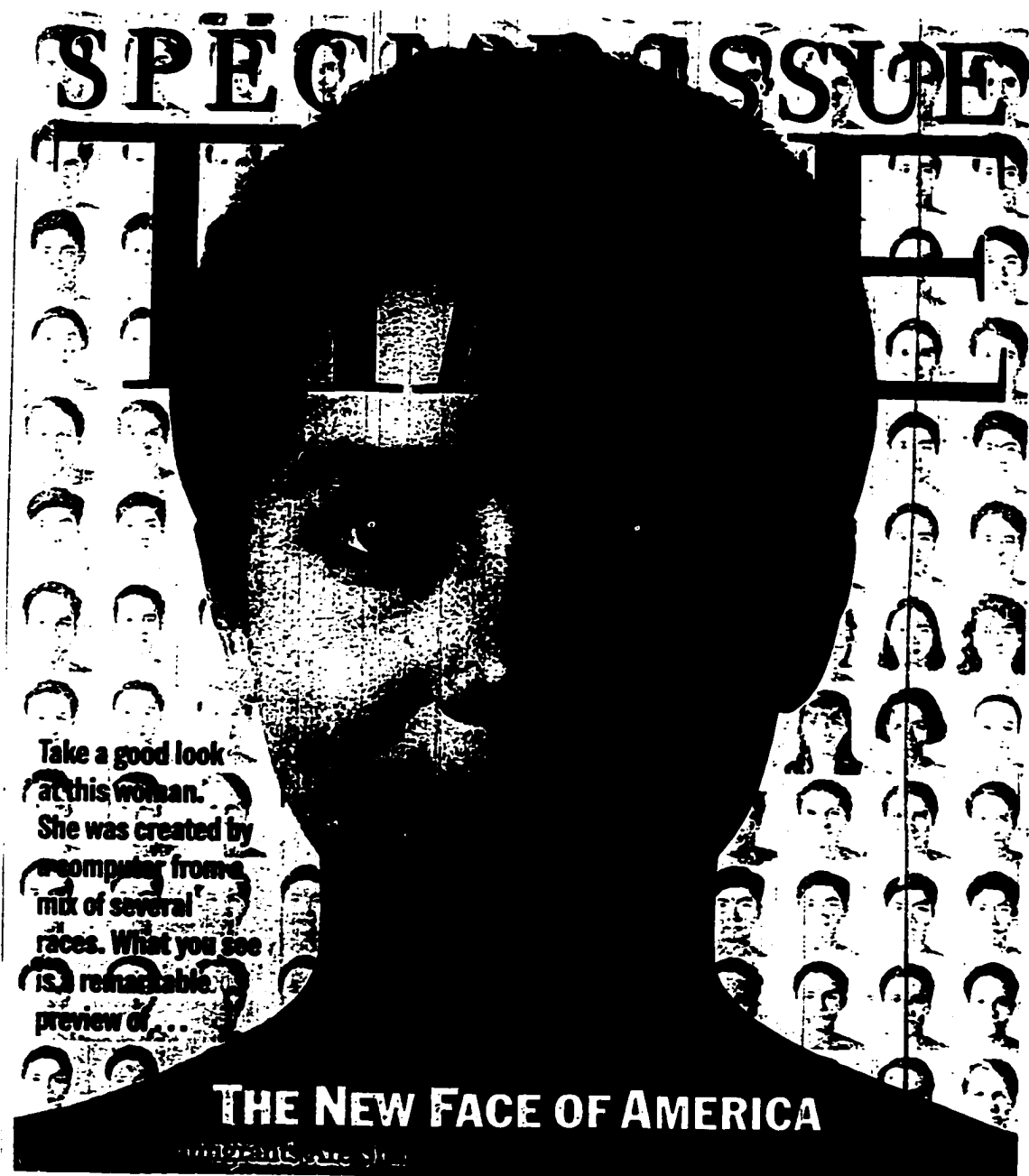


Figure 1: "The New Face of America," Time, Special Issue, Fall 1993.



Betty, meet Ashley, a '90s woman

Figure 2: "Betty, meet Ashley, a 90's woman," US News and World Report, April 1, 1996.



Figure 2: Continued.



Figure 1. "This is not America."

Figure 3: "This is Not America?"



Some black-white couples want to create a "multiracial" category for their children on census and other forms, including Edward Cooper and his wife, Barbara McIntyre. They walked with their son, Ethan McCooper, 12, as he bicycled in Portland, Ore.

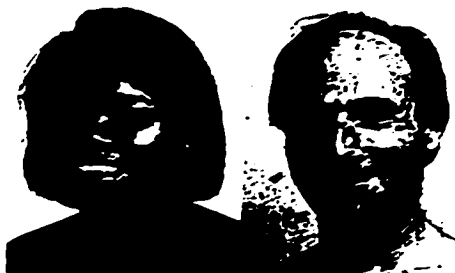
Figure 4: "More Than Identity Rides on Drive for New Census Category," New York Times, July 6, 1996.



Marna and Reuben Cahn found the birth of Aaron softened her family's resistance



For Hobson and Gawande, mutual pursuits and values bridge ethnic differences



Mills and Grosz want their children to define for themselves who they want to be

Figure 5: "Intermarried...with Children," Time, Special Issue, Fall 1993.

Don't you dare list them as 'other'

Multiracial Americans seek full recognition



True identity. *The Craftons won a Michigan fight to allow their kids to be listed as "multiracial."*

Figure 6: "Don't you dare list them as 'other'," US News and World Report, April 8, 1996.



Jim Wilson/The New York Times

Linda Chandler and Stafford Gregoire chose to live in Berkeley, Calif., in part because it has many other multiracial families. They hope to give their daughter, Chandler, a pride that will help her weather intolerance.

Figure 7: "Multiracial Americans Ready To Claim Their Own Identity," New York Times, July 20, 1996.

CONCLUSION

CHAPTER TWELVE

PASSING THOUGHTS

As a conclusion to this thesis, I want to try to open up a new arena of identity politics by exploring the relationship between the law and group rights from the perspective of gay men and lesbians who are also multiracial. In particular, I want to try to identify the moment of critical agency which constitutes the repudiation of this subject and the strategies of resistance which being gay or lesbian *and* multiracial might bring into play. Within this, I want to illustrate the limits of coming out as a critical strategy for identity politics and argue instead for the necessary persistence of passing. In order to do so, I will argue that it is necessary to historicise coming out within a much broader understanding of the relationship between the law and liberal theories of rights on the one hand, and the modern world view which has defined justice in terms of a certain "moral equivalence" on the other. Indeed, it is this modern world view, which as I shall briefly show has its specific reference in Newton's cosmology, that gives liberalism its understanding of the law and of the political subject to which rights refer. In this respect, we can start to see that when groups such as multiracial Americans adopt a strategy of coming out by demanding their own category on the US census, they do so in a context where their understanding of critical resistance is already censored by a concept of justice defined by the modern world view. That is to say, in coming out they are not pursuing an ahistorical strategy but rather one whose terms are limited by the historically specific assumptions of the discourse of moral equivalence.

Against this, I want to argue that these assumptions are historicised by passing insofar as passing points towards the type of critical strategy which is necessary in today's identity politics. In other words, it is because political identities are now seen as being structured around the intersection of multiple subject positions that it is impossible to come out as one kind of subject without implying the repudiation of other ways of speaking as a subject. Perhaps the key point here is that this "cross-identifying" subject shows that rather than basing justice on equivalence both the law and liberal theories of rights are in fact structured upon a privileged site of difference, so that passing must persist as a strategy of resistance if this subject is not to face the repudiation which comes with holding certain legally prohibited identifications. To put this slightly differently, from the point of view of these repudiated identifications passing must necessarily persist because the victim never finally gets to speak. Passing is therefore anything but passé because it is the only strategy of resistance that is open to the victim who cannot speak, that is, it becomes the critical strategy of the subject who is prohibited by the law from speaking as a victim of discrimination.

The point of this concluding chapter is therefore not only to show that within current American interpretations of equal protection law the gay man or lesbian who is multiracial will be a victim who is prohibited from speaking, but also to show the strategies of passing which might be adopted here as a means of resisting the law's censorship of the terms of legitimate speech. In terms of today's identity politics, I therefore want to argue that passing is important because it recognises the complex interrelationship between resistance and repudiation, and in some sense allows the subject to take justice into his or her own hands. In contrast, this strategy is not available when we come out, with the result that coming out follows liberal theory by trivialising this interrelationship. In this respect, passing also supports the basic argument which we have explored in earlier chapters that the site of critical agency always lies elsewhere than in the subject position which is recognised by the law as the site of political

inclusion, that is, elsewhere than in the ego ideal upon which the image of a rational free will is centred.

In order to carry out the critical project which I have sketched here, it is necessary to begin by exploring why it is impossible for gay men and lesbians to speak as the victim in American judicial interpretations of equal protection: from this point we can then consider the impact which this has on homosexual blacks who make claims for racial discrimination, and from this use our understanding of the tension between black and multiracial identity to think through its more complex implications for gay men and lesbians who are multiracial. As we shall see, it is the way in which judicial interpretation reduces the identity of the plaintiff in discrimination cases to sexual orientation if he or she is gay or lesbian which not only makes the gay or lesbian multiracial the site of a victim who cannot speak, it also makes passing as straight an important strategy for resisting racial discrimination because it avoids the danger that this claim will be conflated with its prohibited sexual orientation. As I will show, although it is conducted as something of a thought experiment and is possibly controversial, the work of Mary Eaton on black homosexuals and the law provides a justifiable basis for this interpretation.

In order to understand how the identity of the plaintiff gets to be reduced to his or her sexual orientation in discrimination cases if he or she is homosexual, it is necessary to understand how what Francisco Valdes has described as the "conflation of sex and gender with sexual orientation" has made the transition from popular cultural understandings of sexual identity into the basis of judicial interpretation. This will help us to see that cases involving, first of all, claims for sex discrimination turn not on the anatomical sex or even the gender behaviour of the plaintiff but on the reduction in the court's imagination of these quite separate issues to his or her sexual orientation. In this way, sexual orientation comes to define the presence of a "loophole" which, for example, allows the claims of effeminate men that they have been the victims of gender

discrimination to be dismissed on the grounds that this effeminacy is simply the manifestation of an underlying homosexuality. In other words, rather than distinguishing anatomical sex as male or female from gender as masculine or feminine, and these from sexual orientation as heterosexual or homosexual, the courts have conflated feminine gender behaviour with homosexuality and in this way have made sexual orientation a loophole for denying the right of equal protection to effeminate men.

As Valdes suggests "The association of social gender atypicality with minority sexual orientation is used to substitute sexual orientation for sex and gender in legal analyses of sex/gender discrimination."⁵⁵³ As he points out, gender now becomes a pivotal point in the manipulation of discrimination cases. On the one hand, by conflating gender with sex, courts can protect plaintiffs, but where they conflate gender with sexual orientation, the opportunity to leave the plaintiff unprotected appears. Thus, it is the association of gender with sexual orientation which opens the "sexual orientation loophole" to which we referred earlier. For in having the opportunity to shift the referential context of gender from sex to sexual orientation the courts can move discrimination claims either into or out of the terrain of legal protection. As it stands at the moment, then, the only certain guarantee of protection comes when discrimination takes place along the conflation of sex and gender.⁵⁵⁴ In other words, where there are conventional male and female gender roles publicly performed as such. The key element here is that the conflation of gender identity with sexual orientation has led the courts to ignore the definitional distinction between sexual desire and sexual conduct which Janet Halley has suggested is gestured at by the First Amendment. As we have seen, this leads the claims of gender discrimination made by effeminate men to be dismissed on the grounds that homosexuality is not recognised as a suspect class of persons even though speech and conduct are not equivalent in law. In other words, Valdes argues that "To fulfill its gender anti-discrimination mandate, the law must recognise that sexual orientation often provides a cover for gender discrimination."⁵⁵⁵

As I have suggested, in order to understand the significance of this for gay men and lesbians who are multiracial, this argument must be extended to give an account of the impact of the sexual orientation loophole at the point where racial identity and sexual orientation intersect. To do this we need to see that the conflation which Valdes refers to can in fact be expanded by adding race to gender in the framework which he has set up. Thus, where gender is conflated with sex by the courts we can expect the black homosexual claiming racial discrimination to be protected. However, when the courts choose to conflate gender with sexual orientation the sexual orientation loophole reappears thus allowing a prohibited sexual orientation to serve as the basis for racial discrimination. We can see how this might be possible by examining the work of Mary Eaton on black homosexuals and the law. As Eaton points out, the difficulty of exploring this critical intersection is that no attempt has yet been made to launch a discrimination claim which combines sexual orientation with race.⁵⁵⁶ So far the only step beyond race has been, as we saw in chapter eight, at its intersection with sex determined gender where (heterosexual) women of colour have been recognised as a suspect class, so that the courts have made a departure from simply focusing on gender *and* race - in which, as Eaton reminds us, they have traditionally coded discrimination in terms of the experience of white women and black men.

As Eaton also reminds us, the reason why no equivalent sexual orientation claim has been made is that same-sex sodomy is illegal in the US. In other words, cases such as the ones she is seeking to examine are statutorily impossible. As she points out, although this should not prevent gay or lesbian litigants from making discrimination claims on other grounds such as race, it is apparent that the courts have taken the legislative refusal to recognise sexual orientation discrimination as a legitimate basis for protection as a sign that homosexuals are barred from claiming any other class of protection.⁵⁵⁷ In other words, the implication here is that sexual orientation has become a loophole which has allowed courts to discriminate along the grounds not merely of gender but also of race.

As Eaton therefore concedes, the difficulty with the type of research she is undertaking is that there are no cases which she can review in order to support this analysis. To a certain extent she therefore sets the scene for my own attempt to interpret the identity politics which affect gay and lesbian multiracials, for as I pointed out in chapter six the fact that multiracial identity has only just received a measure of recognition on the census means that we have a further reason (other than the Bowers decision) for not expecting them to advance their own singularity as a basis for anti-discrimination legislation. In other words, Eaton's work is a very useful precedent from which to justify my own project here as an exercise in "thinking the presencing of the present." For this is just what she is doing.

Eaton, however, does have the benefit of being able to review cases where claims for racial discrimination by black men have been denied on the grounds of the plaintiff's homosexuality. For example, in the case of *Williamson v. A.G. Edwards and Sons Inc.* in which a black homosexual male was dismissed from his job, Eaton suggests that although Williamson was dismissed for continually discussing "the details of his homosexual lifestyle" and for wearing make-up to work, the fact that there were other white homosexual male workers who also discussed their lifestyles but who only wore earrings rather than make-up points to the essentially racial basis of the dismissal.⁵⁵⁸ Here Eaton argues that the court justified its denial of protection to Williamson only on the suspect distinction which it made between wearing earrings and wearing make-up, something which she suggests could have been interpreted as an expression of Williamson's racial identity just as much as his sexual identity.

One of the main conclusions we can draw from Eaton's analysis, therefore, is that the exclusion of homosexuality from the field of prohibited discrimination effaces the black homosexual from the protection of the law. That is to say, because race is a prohibited discrimination and sexual orientation is not, the claims made by black homosexuals are erased under the heading of their unprotected homosexuality. In other

words, once one is identified as homosexual before the law the prohibition which surrounds this "trumps" all those others such as race or gender which are otherwise allowed for heterosexual individuals. As Eaton argues, "the juridical category of homosexual [is] a category apparently so consumed by its status as sexually deviant that there exists no racial remainder. In short, legally speaking, there is no race to homosexuality."⁵⁵⁹ The black homosexual is therefore an important figure because he or she represents an oxymoron within discrimination law as it is currently interpreted. This arises because the operation of this law relies upon denying these cases of consubstantial oppression whose acknowledgment would threaten the isolation of the homosexual as an unprotected category. As Eaton adds, "this whitewashing of sexual identity is likewise required to sustain the dichotomised system of straight and queer identities."⁵⁶⁰ The fact that the cross-identifications made by the black homosexual threaten the law with its immanent deconstruction is something which Eaton therefore suggests has been overlooked by those looking at only the law's conflation of sex and gender with sexual orientation. As she notes, "If racial erasure is as crucial to the survival of the homo/het divide and the continued containment of homosexuality as an outsider category within it, then racialising the homosexual body is equally necessary to a strategic disruption."⁵⁶¹

At this point it becomes important to raise the question of how these cross-identifications might affect the strategy of resistance pursued by a subject who, when faced with a legal system which prohibits homosexuality, is placed in a situation of consubstantial oppression. James T. Sears gives us an insight into this when he narrates the story of Jacob, a gay African American growing up in the southeastern US.⁵⁶² As Sears points out, fearful that his "effeminate mannerisms" coupled with his disinterest in girls and timidity towards sports would lead to him being outed as gay, Jacob used his academic ability to create a "bookworm" persona through which he was able to deflect any suspicion about his sexual orientation. As Valdes, who retells this story, suggests, here we have a case where effeminate social conduct would ordinarily have left Jacob

caught within the sexual orientation loophole, so that his atypical conduct would have been referred directly to an underlying atypical sexual orientation but for his strategy of his displacement. The point here is that Jacob adopted a strategy of "passing as straight" in order to subvert the socio-cultural conflation of gender and sexual orientation. Most importantly, Sears shows that this was a self-conscious strategy of contingent essentialisation in that after graduating from college Jacob organised a community project for gay African-Americans. In this sense, Jacob provides an example of someone whose cross-identifications left him simultaneously both inside and outside the law, and his strategy of passing as straight shows the point where the authority of the law and its subversion are indistinguishable. That is to say, in passing as straight Jacob reinforced the authority of the law at the very moment when he configured the possibility of its subversion.

In terms of our case study, I think that these two examples: the example of Williamson as the victim who is unable to speak and Jacob whose strategy of passing represents the basis for a critically self-conscious response to such silencing, together these raise the possibility of posing the following interesting question: Do multiracial Americans who are gay or lesbian have to pass as straight in order to avoid losing a racial discrimination claim due to the sexual orientation loophole? That is to say, do they have to represent themselves as straight in order to avoid racial discrimination because a claim for such discrimination would be dismissed by the courts on the grounds of their sexual orientation? This seems to be an important question, since the campaign for the census category has been made on the basis that heterosexual multiracial Americans are subject to racial discrimination. On the one hand, as with Jacob, this suggests that the law has the power to censor subjects prior to their appearance in discourse by constituting the field within which legitimate speech is authorised, so that by passing as straight gay and lesbian multiracials will have accepted what Eaton finds in the example case of Williamson: that within the law they cannot speak as homosexuals. On the other hand,

however, in passing as straight in order to avoid having their black identity discriminated against by the law we might also suggest that they are subverting the very ideality of the law: the claim of judicial interpretation to represent justice. For instead of searching for justice in the law, by passing as straight in order to protect their racial identity from the discrimination which their sexual orientation would bring about, gay and lesbian multiracials would in fact be taking justice into their own hands.

Since the repudiation of sexual orientation is central to this strategy of resistance, it seems to direct our critical imagination in two directions. On the one hand, it allows us to apply Judith Butler's concept of "gender melancholia" to the intersection of race and sexual orientation, since the incorporation of racial identity implied by the act of passing as straight in order to avoid racial discrimination at the hands of the sexual orientation loophole suggests a politically strategic equivalent of the more psychic incorporation which Butler explores in her deconstruction of the incest prohibition. That is to say, as an act of critical resistance, passing, whether psychic or self-conscious, represents the refusal to acknowledge that prohibitive laws mandate the acceptance of loss.⁵⁶³ Clearly, the recognition of multiracial Americans on the census changes nothing here. Nor would any wider legislative protection which they might receive in the future. In other words, because the law still outlaws same-sex relations gay and lesbian multiracials would still have to pass as straight in order to avoid having their claims for (multi)racial discrimination denied by the courts through the latter's conflation of sex and gender with sexual orientation.

On the other hand, this same repudiation of sexual identity also invites us to consider the relationship between passing and coming out, the two strategies of resistance traditionally identified with race and sexual orientation, at their point of intersection within the subject. The question here is whether passing as straight might be a strategy for gay men and lesbian multiracials to follow when coming out as multiracial, given that the law defines homosexuality as unworthy of equal protection. In other words,

for gay and lesbian multiracials it seems that the intersection of race and sexual orientation is something which must be open to the "strategic use of passing" if coming out as multiracial is not to leave them at the mercy of the sexual orientation loophole.

This is important because, contrary to the analysis which I have offered here, coming out does indeed seem to be the sole strategy of critical resistance used by the new identities which have appeared under the term identity politics. For example, focusing on what she sees as the contemporary interest in "coming out" and "mimicry" as critical practices for subaltern subjects, Carole-Anne Tyler has suggested that "Ours is the era of the passing of passing as a politically viable response to oppression."⁵⁶⁴ In this respect, coming out and mimicry would seem to signal an end to passing by positing the ideal of "identity as difference." As Tyler puts this, "They insist on the other's right to be other - to be seen, heard, known, and named as different - affirming that difference the one directly, the other indirectly, through negation and irony."⁵⁶⁵ Against this, passing is passé because it cannot be named; on the one hand the mark of passing successfully is the lack of any such mark, so that it is only the failure of passing that can be named. In this respect, Tyler suggests that it appears to be out of place in today's identity politics.

This intervention is important precisely because the multiracial advocacy groups which we have looked at in our case study believe that they are indeed mourning the passing of passing. In arguing for recognition on the next US census and other government forms passing has been displaced by coming out as a strategy of resistance, so that the achievement of this recognition, though it is admittedly less than the separate category they had hoped for and only the prelude to a further demand for equal protection legislation, implies that passing is now passé. As Jana Wright, a biracial journalist and writer has argued, "Coming out is now my new preoccupation. Oh sure, my friends know I'm biracial....But because I am mixed and very light, to the general public I 'pass' through no fault of my own. I am tired of the assumption that I must be white, so I want to come out."⁵⁶⁶ In other words, the multiracial argument is that passing is passé because they

have passed beyond the monoracial logic which has traditionally organised thinking on race and identity in America. That is, in coming out as multiracial and being recognised as such by the census, the monoracial categories which made passing necessary have been transcended.

As I will try to show here, the reason for questioning the efficacy of coming out is that although they unsettle existing structures of identity, coming out as just gay, or just black, or just a woman reinscribes a much broader commonality with the liberal discourses of pluralism, diversity, and assimilation which they rightly set out to critique. That is to say, in reducing their experience of identity to just one subject position they are reinscribing what William Connolly has termed the discourse of moral equivalence and the assumptions of the modern scientific world view of which it is a part. Because of this their view of identity is determined by a view of justice which demands the reduction of subjectivity to the point where political identities see themselves as just the victim. In contrast, our analysis of passing suggests that the relationship between oppression and victimisation is more complex than the account of identity provided by the modern world view can accommodate, and that on this basis the association of justice with equivalence might be transcended. In other words, the gay and lesbian multiracials who would find it necessary to pass as straight in order to avoid racial discrimination at the hands of the sexual orientation loophole allow us to mark the historicity of the discourse of moral equivalence. However, in order to appreciate this point we first need to understand a little more about what this discourse represents.

As I suggested, here we can turn to William Connolly and specifically to his critique of the Western understanding of evil. As Connolly argues, in a post-theological universe we have constructed the notion of moral equivalence as a way of dealing with the loss of God as a final marker for the cause and justification of suffering in human existence. As he points out, with the death of God our sense of pain and suffering turned inwards thus gaining an immediate relevance and requiring an immediate explanation

and resolution. As a result, by arguing that for every identifiable act of suffering there must be a responsible agent, the idea of moral equivalence allowed every individual to identify the source of this suffering outside of themselves.⁵⁶⁷

As I noted above, the shift which established moral equivalence as the basis for modern moral theory came with the appearance of Newton's cosmology and the modern scientific world view which it put in place. In its essence, this involved a rejection of the Aristotelian principle that every physical body had a natural place in the universe, that this universe was hierarchically ordered, and that this ordering was performed by a principle mover. Of course, this also formed the basis of the theological world view into which its logic had been incorporated. In this context, one of Newton's most important moves was to posit the idea of absolute space, for it was upon this that the distinct separateness, as opposed to the hierarchical ordering, of bodies in space was established. As Milic Capek has pointed out, "In classical science space was regarded as a homogeneous medium existing objectively and independently of its physical content."⁵⁶⁸ On this basis, Capek notes that because space was itself unchanging, "an inert receptor of things," all of the physical effects which took place on bodies had to be traced to the bodies themselves rather than to some principle mover.⁵⁶⁹ As he adds, time played out a similar set of understandings as space. Understood simply as duration or succession, it was held that "time flows no matter whether something changes or not (bodies may be at rest or in motion)."⁵⁷⁰ Therefore, just as bodies moved *in* space so changes took place *in* time, so that the distinction between space and time and the material bodies moving and changing within them was the foundation upon which the modern scientific world view was based.⁵⁷¹

Under these circumstances, the crucial element in Newton's science was his explanation of why bodies moved in space and time. As we have just noted, by ending Aristotle's hierarchy of natural places, the separation of space from the bodies in it meant that the cause of all movement had to be located in the bodies themselves. To do this he

offered the two conservation laws, which posited that although the configuration of the bodies which appeared in space might change, the total quantity of matter represented by those bodies and the amount of energy existing before and after these changes took place remained the same. To make this possible, Capek notes that Newton had to assume that bodies consisted of particles which were ultimately indivisible.⁵⁷² In other words, the conservation laws could only be theorised if the universe consisted of "ultimate particles," since the conservation of the total quantity of matter and energy required that every action exerted an equal and opposite reaction (ie. an action without a remainder) - something which was only possible if the universe could be reduced to its ultimate particles. It was therefore through the presumption which he made about matter in establishing the conservation laws, so that every action resulted in an equal and opposite reaction, that Newton was able to posit the operational possibility of the universe - that bodies of matter might move in a space and time to which they were not causally connected.

Therefore, it was this separation of the contents of the universe from their receptor which marked the appearance of the post-theological age and the modern scientific world view. The political importance of this separation was that it established an ontology which allowed responsibility to be located in the free will of each human actor and morality to be framed in terms of reciprocity between those actors. That is to say, without a prime mover, all actions could now be related to the direct impact of one body on another. As this reference to reciprocity suggests, the discoveries which Newton made about the physical world were given their broader philosophical significance at least in part by Kant. For example, the conservation laws theorised by Newton reappeared in Kant's moral philosophy as the basis for his categorical imperative. That is to say, the postulate that every action engendered an equal and opposite reaction became the principle upon which individual ethics, Kant's good will, could be universalised and made into a moral law. Or to put it slightly differently, the categorical imperative was set

up in such a way that the quantity of moral responsibility in the universe would remain constant.

Largely due to the way in which the conservation laws were worked into his categorical imperative, the discourse of moral equivalence has been the legacy of Kant most favoured by modern political theory. The effect of this has been that political philosophers since Kant have sought to resolve the existential crisis initiated by the loss of theological markers by deploying the edicts of the categorical imperative to inscribe a distinction between victims and oppressors. In other words, as a way of relieving post-theological anxiety and answering the existential question of why am I suffering, the discourse of moral equivalence allowed the subject of political theory to answer this by identifying him or herself as "the victim." In this respect, we can trace the image of the modern political subject to Newton's argument that the universe could be reduced to its ultimate particles, since it is only through the action-reaction of non-divisible bodies that morality can be framed as equivalence. As John Rawls' theory of justice seems to suggest, modern liberal theory has constructed the political subject as the stereotypical victim, one who is all too at home with its pain and suffering, since this is the only way in which post-Kantian liberal theory has been able to imagine the possibility of justice.

The point here is that in associating the possibility of justice with the apparent safety of identifying ourselves as just the victim, we are following the reductionism of the modern scientific world view. More specifically, it trivialises the tension between those cross-identifications which constitute our subjectivity. Because of this, like the principle of moral equivalence which he relies upon to construct his veil of ignorance, the use which Rawls makes of the original position is deconstructed by the image of a subject which only appears as an effect produced by the play of resistance and repudiation around multiple subject positions, a subject which therefore cannot be reduced to an "ultimate particle." Within what then becomes only a "subject-effect," we find that since the inclusions upon which the subject is represented cannot escape an internal

relationship to what they exclude, the victim is always already overdetermined by its association with the identity of the oppressor. Rather than there simply being a victim for whom there is an identifiable victimiser, there is instead within this "subject" an infinite chain of intersecting victims and oppressors - something which, as I have suggested, forces us to radically revise our ideas about the strategies through which we resist discrimination.

Therefore, referring back to our case study, when black civil rights groups argue that they have been victimised by white America, they forget that the monoracial assumptions of this discourse discriminates against those multiracial Americans who will identify in part with white America as well as those who fall outside the black/white paradigm completely. Meanwhile, when multiracial advocacy groups challenge the grammar of this debate, they too forget that the heterosexual assumptions of anti-discrimination law - which ultimately codes the recognition of multiracial identity on the census - effectively erases the sexuality of those multiracial Americans who identify as gay or lesbian. In other words, from the point of view of liberal theories of rights, although black civil rights groups have a legitimate claim to discrimination they fail to see how the monoracial structure of their claim involves them in a simultaneous oppression of multiracial identity, just as the legitimate claim of multiracial groups to racial discrimination fails to see how legal assumptions about heterosexuality also creates an irreducible tension within multiracial identity. The problem here is that because they are forced to approach the question of justice through the idea of moral equivalence both identities are forced to essentialise themselves as privileged sites of deconstruction. That is to say, they are forced to come out and represent themselves to the law as *just* a victim. Although it does not quite capture the point I am making here, we should take a moment to note Patricia Hill Collins' suggestion that "Although most individuals have little difficulty identifying their own victimisation with some major system of oppression - whether it be race, social class, religion, physical ability, sexual orientation, ethnicity,

age or gender - they typically fail to see how their thoughts and actions uphold someone else's subordination."⁵⁷³

In this respect, it is this contradictory relationship between being the victim and being the oppressor, where both exist simultaneously within a single subjectivity, which links the demand to be recognised as the victim which we find in coming out to Butler's recent work on censorship. Here she shifts the focus of critical attention away from the rules which may limit the speaking subject and towards the performative force of laws which constitute the subject prior to speech by marking out a domain in which certain types of speech, certain self-identifying statements, are unutterable. As she suggests, "The subject's production takes place not only through the regulation of that subject's speech, but through the regulation of the social domain of speakable discourse."⁵⁷⁴ In this respect, Butler identifies censorship as a productive form of power in the sense which Foucault adopts the terms bio-power and bio-politics, since its function is to produce the self as a particular type of speaking subject. Thus, whether one becomes a subject or not depends upon whether or not one obeys certain norms governing what is speakable and what is not.⁵⁷⁵ It is here that the discourse of moral equivalence is therefore important, since, as a set of ontological norms which govern discourse on the legal subject, it forces the self who would desire justice to censor those discordant identifications within its subjectivity which threaten the distinction between the victim and the oppressor. In this respect, its power to censor lies in its ability to enforce certain identifications a priori.

Thus, it is because existing jurisprudence on the Fourteenth Amendment does not grant equal protection to gay men and lesbians, and instead supports state legislation which makes sodomy and other forms of same-sex intercourse illegal,⁵⁷⁶ that the demand of multiracial individuals who are gay and lesbian to be recognised on the census is already a censored utterance at the moment when that demand is made. They may speak as multiracial Americans but not as gay or lesbian multiracial Americans. As I noted in the previous chapter, it is this which makes the equal recognition of multiracial

Americans an always ambiguous achievement and requires us to always make clear the lack of universality which therefore adheres in such otherwise everyday terms as "American." As Butler notes, "When we ask what it means to petition before the law, we note the belated repetition of foreclosure that orchestrates and makes possible a speaking subject with such a claim."⁵⁷⁷ Therefore, it is because the law will only open its door to subjects who represent themselves within the appropriate range of (hetero)sexual possibilities for being the victim that it becomes impossible for gay and lesbian multiracials to fully identify with those atypical identifications which cross their subjectivity.

It is because of this that I have argued that we need to rethink the strategies of resistance which are brought into play in today's identity politics, for clearly the strategy of coming out follows the liberal practice of idealising the judicial process in such a way that the violent repudiations which it necessitates remain unthought. In contrast, the critical essentialism which seems to inform passing suggests that the practice of freedom does not have to terminate in the assumption that justice can only be found in the adjudications of the legal system. Instead, it suggests that the subject can in some sense take justice into its own hands even while it reinscribes the privileged sites of difference which judicial interpretation makes present. It is in this sense, then, that while we may not go beyond the law in the sense that we might experience the idea of Justice, the discourse of moral equivalence which informs legal interpretation might still be transcended.

In this respect, an important thing to keep in mind about passing is that it supports the argument made in part one that the possibility of resistance requires that there is no outside to power. That is to say, as the response to a legally prohibited identification, passing works to remind us that resistance to power is always to be found within the exercise of power itself. Thus, it is because the strategy of resistance found in coming out requires the repudiation of an alternative but unauthorised identification that passing will

remain a necessary part of the strategies found in identity politics. In other words, passing becomes the critical strategy of the victim who is not allowed to speak. As my analysis has suggested, it is because the principal identification which is censored in American law is gay and lesbian sexuality that the victim who is unable to speak will be the one whose other identifications intersect with this subject position. Therefore, rather than mourning the end of passing as a passé form of resistance, the consequences for gay and lesbian multiracials suggests that passing will persist even as "multiracial Americans" come out.

ENDNOTES

¹"The Deconstruction of Actuality: An Interview with Jacques Derrida," Radical Philosophy, 68, Autumn 1994, p30.

²Ibid.

³This is Heidegger's point of departure in Being and Time. In the following paragraphs I attempt to summarise the main argument of this work and explore the way in which Heidegger presents it. See Martin Heidegger, Being and Time, New York, Harper and Row, 1962.

⁴Derrida's reflections on Heidegger can be found in a great number of his texts. The most well known of these are "*Ousia and Gramme: note on a Note from Being and Time*," and "The Ends of Man," both in Margins of Philosophy, Chicago, University of Chicago Press, 1982, and Of Spirit: Heidegger and the Question, Chicago, University of Chicago Press, 1989. However, other essays and more recent books also offer important insights since they focus at certain points on other aspects of Heidegger such as his view of time, death, and the ethical questions which are raised by them. In this respect, it is worth reviewing Derrida's Aporias, Stanford, Stanford University Press, 1993; Given Time I: Counterfeit Money, Chicago, University of Chicago Press, 1992; and The Gift of Death, Chicago, University of Chicago Press, 1995. As I noted above in the text, we should also be aware that the task of thinking the presence of the present is first explored as a specific question by Heidegger, so that we should also keep in mind the significance to this chapter of such texts as Discourse on Thinking, New York, Harper Torchbooks, 1966, and What is Called Thinking?, New York, Harper Row, 1968.

⁵Derrida addresses the example of speech in Of Grammatology, Baltimore, Johns Hopkins University Press, 1976, where he notes that "This experience of the effacement of the signifier in the voice is not merely one experience among many.... Within the closure of this experience, the word is lived as the elementary and undecomposable unity of the signified and the voice, of the concept and a transparent substance of expression. this experience is considered in its greatest purity - and at the same time the condition of its possibility - as the experience of "being." (p20)

⁶Here I am starting to play on the connection between Being and Time and Heidegger's later book, Kant and the Problem of Metaphysics, Bloomington, Indiana University Press, trans. Richard Taft, 1990. The point here is that the question of the possibility of Being can be interpreted within the approach of analytic philosophy as a problem of knowing; which is not to say that Heidegger foresees that the problem can be resolved through any of the terms used by analytic philosophers, or that the problem is resolvable at all in the foundational terms which analytic philosophy directs itself towards identifying. I take up

this connection a little more directly in part two of the thesis, where the limits of analytic philosophy are gestured at in the tension which Heidegger finds in Kant's attempt to relate the imagination to our faculty of Understanding.

⁷See Of Grammatology. As he says, "That a speech supposedly alive can lend itself to spacing in its own writing is what relates it originally to its own death." (p39)

⁸As Derrida notes in his discussion of the supplement, as in the supplementary (rather than constitutive) relationship which writing is supposed to have to speech, "What we have tried to show by following the guiding line of the "dangerous supplement," is that...there has never been anything but writing; there has never been anything but supplements, substitutive significations which could only come forth in a chain of differential references, the "real" supervening, and being added only while taking of meaning from a trace and from an invocation of the supplement." (Ibid, p159)

⁹"Differance," in Margins of Philosophy, pp1-27.

¹⁰"Structure, Sign, and Play in the Discourse of the Human Sciences," in Writing and Difference, Chicago, University of Chicago Press, 1978, p282.

¹¹Although his criticism takes a different direction, something to which we shall return in the next chapter, Max Horkheimer's characterisation of the social sciences gets precisely at this ontic reduction carried out by theory when he argues that "The social sciences take human and nonhuman nature in its entirety as given and are concerned only with how relationships are established between man and nature and between man and man." Max Horkheimer, Traditional and Critical Theory," in Critical Theory: Selected Essays, New York, Continuum, 1986, p199.

¹²As Derrida puts it, "The event I call rupture, the disruption I alluded to at the beginning of this paper, presumably would have come about when the structurality of structure had to begin to be thought...." "Structure, Sign, and Play in the Discourse of the Human Sciences," in Writing and Difference, p280. Perhaps more than any other it is this statement and paragraphs which follow it which mark the transformation of structuralism into what has since been referred to as post-structuralism, though Derrida to my knowledge never uses the latter term. In our context, it also represents the recovery of the question of Being from within metaphysics and as we shall now see thinking from within theory.

¹³Ibid.

¹⁴Ibid, p288.

¹⁵"Freud and the Scene of Writing," in Writing and Difference, p230.

¹⁶As Derrida suggests in Aporias, "The problematic closure assigns a domain, a territory, or a field to an inquiry, a research, or a knowledge. All of this is ordered in relation to a thematic object, more precisely to an entity, to a modality of the entity whose identification is presupposed by the unity of this space which in principle can be closed." p40. This connection between theory and the closure of a problematic is supported by Horkheimer's account of traditional positivist theory, where he himself sites Husserl to argue that "Theory is defined "as a enclosed system of propositions for a science as a whole,"...."a certain totality of propositions,"....[such] that all the parts should intermesh thoroughly and without friction." As he adds, "harmony, which includes lack of contradictions," are the necessary conditions of theory. Max Horkheimer, "Traditional and Critical Theory," in Critical Theory: Selected Essays, p190.

¹⁷This relates to Derrida's discussion of the law, which we shall touch upon shortly, and then take up more directly in part two. The point which links theory and the law, that is, theoretical speculation and legal interpretation, however, is their forgetting of the question of Being and their consequent pre-occupation with the ontic difference, that is, the differences between beings with respect to their relationship to beings as a whole.

¹⁸This is why in the above quotation (Note 17) Derrida links the construction of a problematic with the question of closure. Thus, it is not simply that the problematic is closed but that the closure itself is problematic since it relies upon such forceful strategies as naming; in this case naming the problem.

¹⁹See his references to deconstruction in America (the text and the phenomenon) in "Mnemosyne," in Jacques Derrida, Memoires for Paul DeMan, New York, Columbia University Press, 1986, p15-18, where he argues that "one cannot and should not attempt to survey or totalise the meaning of an on going process, especially when its structure is one of transference." (p17)

²⁰As an example of this external aporia, we might again site Horkheimer who refers to "the idea of a future society as a community of free men." As he suggests later in the same essay, it is this not yet existent freedom which gives critical theory its principle of necessity, its rational justification. Max Horkheimer, "Traditional and Critical Theory," in Critical Theory: Selected Essays, p217, 230.

²¹See again Aporias, p16.

²²I think that this is one important implication for politics of his reading of difference. For the play of difference in difference is one which suggests that not only is there no outside to power, no moment of articulation which is external to a deployment of force, but that this play is what locates the possibility of critical distance within the structure of power itself. In other words, because it shows that all structures are the effects of power, the play of differences at work in the word difference shows that critical distance is something which can only be found within existing power structures. As he points out in

Of Grammatology, "The movements of deconstruction do not destroy themselves from the outside. They are not possible and effective, nor can they take accurate aim, except by inhabiting those structures. Inhabiting them *in a certain way*, because one always inhabits, and all the more when one does not suspect it." As he adds, here we are "Operating necessarily from the inside, borrowing all the strategic and economic resources of subversion from the old structure." (p24) This statement is important because it provides a basis for the key critical moves which I make in this thesis, including the account of critical agency which I offer in part one where I use Derrida's reading of difference to explore the productive tensions which appear at the intersection of Foucault's account of power and Lacan's account of resistance, the analysis of the relationship between the law and representation in part two, and the assumptions of liberal contract theory and theories of group rights that it is possible to regard oneself as just the victim and that the allocation of group rights can be resolved through the demand for authenticity in group identity. In this respect, Derrida's formulation of difference allows me to develop a context in which to explore the politics of multiracial identity in the case study. As I will suggest, here difference leads us to focus on the significance of the fact that since a moment of repudiation is internal to any act of critical resistance we find that in their demand for the equal protection of the law group identities can never speak as the authentic victim. As a result, I argue that rather than constantly attempting to "resolve political issues" the role of the critical intellectual ought to focus on trying to expand the terrain of identity on which the political itself can be thought.

²³As I will suggest in introducing the case study in part four, Derrida's critical strategy is not one which is open to the conventional political science idea of a research method or methodology, since methodology is that technique which is used by the metaphysical tradition to close the problematic within which theoretical speculation can take place. In this respect, it is consistent with that type of thinking which is orientated to the concerns found within the ontic difference and not to the question of the possibility of Being. The point here, then, is that methodologies are supported by the dangerous assumption that empirical investigation can inform and improve theory. The reason why this assumption is dangerous, however, is not because empirical investigation cannot improve theory, but rather because theory makes an a priori assumption about particular beings which allows it to be improved by empirical investigation. In other words, because theory assumes that there is something like beings-as-a-whole, the empirical is critically empowered against the theoretical even while it occupies the same ontic terrain. In this respect, it is because it relies upon identifying the empirical differences between beings that any application of theory will repeatedly experience the inability to limit the subject of its inquiry. What this shows is that there is a logic of failure built into theoretical speculation which allows methodologies to be used in a way which avoids the need for critical reflection on the way in which theory and its empirical application mutually reinforce the forgetting of the question of Being. In other words, because it is directed towards an investigation of the empirical differences between beings each methodology serves to reinforce both the assumption that there is something like beings-as-a-whole to which particular beings refer, thereby justifying the constant attempt to extend the differences between these

beings which we find in theoretical speculation. It is because of this critique that we cannot locate Derrida's critical strategy along a continuum which might, for example, oppose liberal positivism at one end to Frankfurt School critical theory at the other. I will illustrate what I mean by this last point further in the next chapter.

²⁴Aporias, p77.

²⁵"Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson eds., New York, Routledge, 1992, pp3-68, p24-25.

²⁶Aporias, p16.

²⁷See Given Time: I. Counterfeit Money, p30, where he argues that "[T]he effort to think the groundless ground of this quasi-"transcendental illusion" should not be either - if it is going to be a matter of *thinking* - a sort of adoring and faithful abdication, a simple movement of faith in the face of that which exceeds the limits of experience, knowledge, science, economy and even philosophy. On the contrary, it is a matter - desire beyond desire - of responding faithfully but also as rigorously as possible both to the injunction or the order of the *gift* as well as to the injunction or order of meaning (presence, science, knowledge)...[C]ommit yourself even if commitment is the destruction of the gift by the gift, give economy its chance."

²⁸"Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson eds., New York. Routledge, 1992, pp3-68, p27.

²⁹"Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas," in Writing and Difference, pp79-154, p91-92.

³⁰Although the context is different, because his broader concern is to critique metaphysical ways of presencing, Derrida's comment in Aporias gets precisely at what I am trying to argue here. That is, "Considering what we just have seen concerning borders, demarcations, and limits, the only characteristic that we can stress here is that of an irreducible double inclusion: the including and the included regularly change places in this strange topography of edges." p80.

³¹Of Grammatology, p110.

³²Aporias, p15.

³³Ibid, p16.

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- ³⁴"Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson eds., p28.
- ³⁵Ibid. p19. My (slightly disjointed) emphasis.
- ³⁶"Force of Law: The Mystical Foundations of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson eds., p28.
- ³⁷Ibid, p23.
- ³⁸Ahiwa Ong, "Colonialism and Modernity: Feminist Re-presentations of Women in Non-Western Societies, Inscriptions, 3:4, 1988, p82.
- ³⁹Ibid, p87.
- ⁴⁰Ibid, p85-86.
- ⁴¹Ibid, p86.
- ⁴²Ibid, p87.
- ⁴³Lata Mani, "Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception," in Inscriptions, 5, 1989, p3-4.
- ⁴⁴Ibid, p3.
- ⁴⁵Ibid, p3.
- ⁴⁶Ibid, p4.
- ⁴⁷"Colonialism and Modernity: Feminist Re-presentations of Women in Non-Western Societies," p88.
- ⁴⁸"Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception," p5.
- ⁴⁹The phrase "strategic essentialisation" is of course Gayatri Spivak's. I discuss it in more detail and explore its critical and ethical significance later in part three. See the essay "Subaltern Studies: Deconstructing Historiography," in Gayatri Chakravorty Spivak, In Other Worlds: Essays in Cultural Politics, New York, Routledge, 1988, p205.
- ⁵⁰This point is also made by William Connolly in Identity\Difference: Democratic Negotiations of Political Paradox, Ithaca, Cornell University Press, 1991, and by William

Corlett, in Community Without Unity: A Politics of Derridean Extravagance, Durham, Duke University Press, 1989.

⁵¹His precise formulation of this is: "My point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to a hyper- and pessimistic activism." See the interview with Foucault, "On the Genealogy of Ethics: An Overview of Work in Progress," In Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, Chicago, University of Chicago Press, 1983, p231-32. Readers will hopefully note the close similarity which this has to Heidegger's argument that Dasein's relationship to the everyday is one of danger, as well as to Derrida's argument that the fact that the law is deconstructible should not be seen as a reason for staying out of political disputes. The point here is that once we come to see binary distinctions as strategic identifications for a finite self, political activity is then enabled by the fact that it relates not simply to politics but to (the boundaries of) the political itself. In other words, everything is dangerous because a finite subject means that the boundaries of the political are never fixed. Indeed, the political is only constituted through fixing the boundaries of the self. Such a position is therefore enabling because, as Foucault suggests, there is always something to do. That is to say, there is never a single moral imperative, such as that found in the victim/oppressor framework, to fall back on. Thus, the idea of danger provides an intellectual and ethical check against mistaking the closure of a problematic as a set of final markers. In other words, like deconstruction itself, it safeguards the political as a site of critical contestation.

⁵²The idea of the "essentially ambiguous achievement" and also the "essentially contested concept" I draw from William Connolly as he discusses them in The Terms of Political Discourse, Princeton, Princeton University Press, 2nd. ed., 1983. See especially p10-11, and p219. Connolly's point is that once we see all concepts as essentially contestable then political understandings need to be looked upon as essentially ambiguous in what they achieve. Connolly makes this point most directly in his view of the modern theory of the subject. Like Foucault's notion of danger, the idea that all concepts are essentially contestable is important because, like Derrida's notion of undecidability, it provides a critical framework within which the transformation of the political is seen not only as possible but more importantly as a legitimate undertaking. In other words, it ensures that a finite self is not obliged to defer the authority to speak to another subject, just as it alerts that self to the ethical questions raised by speaking for others.

⁵³This point raises the crucial question of the relationship between ethics and knowing which I take up again in part two and then again at the end of part three.

⁵⁴See "Questions of Multiculturalism," in Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies and Dialogues, Sarah Harasym ed., London, Routledge, 1990, p62.

⁵⁵Max Horkheimer, "Traditional and Critical Theory," in Max Horkheimer, Critical Theory: Selected Essays, p207.

⁵⁶Ibid. p213.

⁵⁷Ibid. p224.

⁵⁸Ibid. p222. As he also noted, "[This] corresponds to the activity of the scholar which takes place alongside all other activities of a society but in no immediately clear connection with them." (p197)

⁵⁹Ibid. p221, 215.

⁶⁰Ibid. p215, 221.

⁶¹Ibid. p221.

⁶²See Given Time 1: Counterfeit Money, p23.

⁶³As Derrida proposes, "One would be tempted to say that a subject as such never gives or receives a gift. It is constituted, on the contrary...in the promise of the gift. There where there is subject and object, the gift would be excluded. A subject will never give an object to another subject. But the subject and object are arrested effects of the gift, arrests of the gift." Ibid, p24.

⁶⁴Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in Marxism and the Interpretation of Culture, Cary Nelson ed., Chicago, University of Chicago Press, 1988, p287.

⁶⁵Ibid, p281.

⁶⁶Jacques Derrida, Spectres of Marx: The State of the Debt, the Work of Mourning, and the New International, New York, Routledge, 1994, p98.

⁶⁷Michel Foucault, "How an 'Experience-Book' is Born," in Remarks on Marx, New York, Semiotext, 1991, pp25-43, p31.

⁶⁸Ibid.

⁶⁹Ibid.

⁷⁰Ibid, p36.

⁷¹Ibid, p37.

⁷²Ibid, p27.

⁷³Technologies of the Self: A Seminar with Michel Foucault, Luther H. Martin, Huck Gutman, and Patrick H. Hutton, Amherst, MA, University of Massachusetts Press, 1988, p9. See also the essay by John Rachman, "Crisis," in Representations, 28, Fall 1989, pp90-98. The position which Foucault articulates here is of course consistent with his infamous statement in The Archaeology of Knowledge where he asks, "What, do you imagine that I would take so much trouble and so much pleasure in writing...if I were not preparing a labyrinth...in which I can loose myself and appear at last to those eyes that I will never have to meet again. I am no doubt not the only one who writes in order to have no face. Do not ask who I am and do not ask me to remain the same: leave it to our bureaucrats and our police to see that our papers are in order. At least spare us their morality when we write." Michel Foucault, The Archaeology of Knowledge and The Discourse on Language New York, Pantheon Books, 1972, p17.

⁷⁴"Force and Signification," in Writing and Difference, p11.

⁷⁵Gayatri Spivak, "Strategy, Identity, Writing," in Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies and Dialogues, Sarah Harasym ed., p36.

⁷⁶Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in Marxism and the Interpretation of Culture, Cary Nelson ed., Chicago, University of Chicago Press, 1988, p288.

⁷⁷"The Problem of Cultural Self-representation," in Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies and Dialogues, Sarah Harasym ed., p56.

⁷⁸Ibid, p56-57.

⁷⁹As Spivak comments, "In seeking to learn to speak to (rather than listen to or speak for) the historically muted subject of the subaltern woman, the postcolonial intellectual *systematically* "unlearns" female privilege." Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in Marxism and the Interpretation of Culture, Cary Nelson ed., Chicago, University of Chicago Press, 1988, p295.

⁸⁰"The *Intervention* Interview," in Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies and Dialogues, Sarah Harasym ed., p121-122.

⁸¹As Stefano Agosti suggests in his introduction to Derrida's text on Nietzsche, "I'm wondering if traditional logocentric writing represents a means (as it is said in *La Pharmacie de Platon*) for taking shelter from the sun whose face (the face of the father, of good, of capital, of the origin, etc.) cannot, on pain of blindness, be directly stared at....Its clarity derives from *that* which it excludes, that which is withdrawn, removed,

outside of it, which is separate." Stefano Agosti, "Coup upon Coup," in Jacques Derrida, Spurs: Nietzsche's Styles, Chicago, University of Chicago Press, 1978, p21.

⁸²Although I will discuss this term again later, it may be useful to point out briefly here that this "rule" refers to the legislation passed in many US states in the 1920's whereby any person with one-thirty-second of black ancestry was officially designated as black.

⁸³As Lacan argued in his essay on the mirror stage, "philosophy grasps negativity only within the limits of a self-sufficiency of consciousness, which, as one of its premises, links to the meconnaissances that constitute the ego, the illusion of autonomy to which it entrusts itself." In contrast, Lacan argues that the experience of Freud's psychoanalysis "teaches us not to regard the ego as centred on the perception-consciousness system, or as organised by a 'reality principle' - a principle that is the expression of a scientific prejudice most hostile to the dialectic of knowledge. Our experience shows that we should start instead from the function of meconnaissance that characterises the ego in all its structures, so markedly articulated by Miss Anna Freud." Jacques Lacan, "The mirror stage as formative of the function of the I," in Ecrits: A Selection, Alan Sheridan trans., New York, W.W. Norton and Company, 1977, p6.

⁸⁴This critique of the freedom which is assumed to lie with the ego-centred subject is constantly returned to by Lacan in many of his other essays. For instance, in his essay on "The Freudian thing," he suggests that "This interest in the ego is a passion whose nature was already glimpsed by the traditional moralists, who called it amour-propre, but whose dynamics in its relation to one's own body image only psychoanalytic investigation has succeeded in analysing. This passion brings to every relation with this image, constantly represented by my fellow-man, a signification that interests me so much, that is to say, which places me in such a dependence on this image that it links all the objects of my desires more closely to the desire of the other than to the desire that they arouse in me." (p137) It appears again when he considers the treatment of hysteria. Thus, in "The function and field of speech and language in psychoanalysis," he argues that "It is therefore always in the relation between the subject's ego (moi) [the ideal ego first encountered in the mirror stage and retained as the foundation for the Imaginary] and the 'I' (je) of his discourse [the ego ideal through which the subject enters the Symbolic] that you must understand the meaning of the discourse if you are to achieve the delineation of the subject. But you cannot possibly achieve this if you cling to the idea that the ego of the subject is identical with the presence that is speaking to you." (p90) Both of these essays are to be found in Ecrits: A Selection.

⁸⁵Elizabeth Grosz, Jacques Lacan: A Feminist Introduction, New York, Routledge, 1995, p48. Ellie Ragland-Sullivan makes the same observation, suggesting that "by describing the multileveled dimensions that constitute consciousness through the Imaginary, the Symbolic, and the Real, Lacan created the first epistemology since Descartes to locate the source of knowledge in a different place than in the conscious subject." Ellie Ragland-Sullivan, Jacques Lacan and the Philosophy of Psychoanalysis, Urbana, University of Illinois Press, 1986, p130.

⁸⁶As Lacan suggested in his account of the mirror stage, "We have only to understand the mirror stage *as an identification*, in the full sense that analysis gives to the term: namely, the transformation that takes place in the subject when he assumes an image....This jubilant assumption of his specular image by the child at the *infans* stage, still sunk in his motor incapacity and bursling dependence, would seem to exhibit in an exemplary situation the symbolic matrix in which the *I* is precipitated in a primordial form, before it is objectified in the dialectic of identification with the other, and before language restores to it, in the universal, its function as subject. This form would have to be called the [Ideal-I...in the sense that it would be the source of our secondary identifications....But the important point is that this form situates the agency of the ego, before its social determination, in a fictional direction, which will always remain irreducible for the individual alone, or rather, which will only rejoin the coming-into-being of the subject asymptotically, whatever the success of the dialectical synthesis by which he must resolve as *I* his discordance with his own reality." Jacques Lacan, "The mirror stage as formative of the function of the I," in Ecrits: A Selection, p2.

⁸⁷Elizabeth Grosz, Jacques Lacan: A Feminist Introduction, p50

⁸⁸As Lacan suggests, "This moment when the mirror-stage comes to an end inaugurates, by the identification with the *imago* of the counterpart and the drama of primordial jealousy, the dialectic that will henceforth link the *I* to socially elaborated situations. It is this moment that decisively tips the whole of human knowledge into mediatisation through the desire of the other, constitutes its objects in an abstract equivalence by the co-operation of others, and turns the *I* into that apparatus for which every instinctual thrust constitutes a danger, even though it should correspond to a natural maturation - the very normalisation of this maturation being henceforth dependent, in man, on a cultural mediation as exemplified, in the case of the sexual object, by the Oedipus complex." Jacques Lacan, "The mirror stage as formative of the function of the I," in Ecrits: A Selection, p5-6. This point is developed in "The subversion of the subject and the dialectic of desire in the Freudian unconscious," where he suggests that "what the subject finds in this altered image of his body is the paradigm of all the forms of resemblance that will bring over on to the world of objects a tinge of hostility, by projecting on them the manifestation of the narcissistic image, which, from the pleasure derived from meeting himself in a mirror, becomes when confronting his fellow man an outlet for his most intimate aggressively." Jacques Lacan, "The subversion of the subject and the dialectic of desire in the Freudian unconscious," in Ecrits: A Selection, p307.

⁸⁹As Lacan puts this, "Demand itself bears on something other than the satisfaction which it calls for. It is demand for a presence or an absence. This is manifest in the primordial relation to the mother, pregnant as it is with that Other to be situated *some way short of* any needs which it might gratify. Demand constitutes this Other as already possessing the 'privilege' of satisfying needs, that is, the power to deprive them of the one thing by which they are satisfied. This privilege of the Other thus sketches out the radical form of

the gift of something which it does not have, namely, what is called love." Jacques Lacan, "The Meaning of the Phallus," in Feminine Sexuality: Jacques Lacan and the école freudienne, Juliet Mitchell and Jacqueline Rose, eds., New York, W.H. Norton and Company, 1985, p80.

⁹⁰As Lacan adds in the same essay, "The demand for love can only suffer from a desire whose signifier is alien to it. If the desire of the mother *is* the phallus, then the child wishes to be the phallus so as to satisfy this desire. Thus the division immanent to the desire already makes itself felt in the desire of the Other, since it stops the subject from being satisfied with presenting to the Other anything real it might *have* which corresponds to this phallus - what he has being worth no more than what he does not have as far as his demand for love is concerned, which requires that he *be* the phallus." Ibid. p83.

⁹¹As Lacan notes in "The Freudian thing," "What is called logic or law is never more than a body of rules that were laboriously drawn up at a moment of history duly certificated as to time and place, by agora or forum, church, even party. I shall expect nothing therefore of those rules except the good faith of the Other, and as a last resort, will make use of them, if I think fit or if I am forced to, only to amuse bad faith." Jacques Lacan, "The Freudian thing," in Ecrits: A Selection, p140.

⁹²Judith Butler, Bodies that Matter: On the Discursive Limits of "Sex", New York, Routledge, 1993, p106.

⁹³Ibid, p35 and p54-55.

⁹⁴Judith Butler, The Psychic Life of Power: Theories of Subjection, Stanford, CA, Stanford University Press, 1997, p87. See especially chapters two and three: "Circuits of Bad Conscience: Freud and Nietzsche," and "Subjection, Resistance, Resignification: Between Freud and Foucault."

⁹⁵Gayatri Chakravorty Spivak, Outside in the Teaching Machine, New York, Routledge, 1993, p33.

⁹⁶Bodies that Matter: On the Discursive Limits of "Sex", p109.

⁹⁷This paragraph obviously touches on the broad parameters of Foucault's work. In the discussion which follows I attempt to briefly summarise this and relate it to the particular question of his view on the relationship between repression and power.

⁹⁸Michel Foucault, "Governmentality," in The Foucault Effect: Studies in Governmentality, Graham Burchell, Colin Gordon, and Peter Miller, eds., London, Harvester Wheatsheaf, 1991, pp87-105.

⁹⁹For Foucault's full account of the panopticon see Discipline and Punish: The Birth of the Prison, New York, Vintage Books, 1979, pp195-231.

¹⁰⁰Michel Foucault, The History of Sexuality. Volume 1: An Introduction, New York, Vintage Books, 1978, p35.

¹⁰¹Ibid.

¹⁰²Ibid, p47.

¹⁰³Ibid, p48.

¹⁰⁴Ibid.

¹⁰⁵"Afterword by Michel Foucault: The Subject and Power," in Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, p208.

¹⁰⁶Ibid, p212.

¹⁰⁷The History of Sexuality. Volume 1: An Introduction, p93.

¹⁰⁸"Afterword by Michel Foucault: The Subject and Power," in Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, p221.

¹⁰⁹As Foucault notes, "power is only exercised over free subjects, and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse compartments may be realised." "Afterword by Michel Foucault: The Subject and Power," in Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, p221.

¹¹⁰The History of Sexuality. Volume 1: An Introduction, p95.

¹¹¹"Afterword by Michel Foucault: The Subject and Power," in Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, p221. As he continues here, "In this game freedom may well appear as the condition for the exercise of power (at the same time its precondition, since freedom must exist for power to be exerted, and also its permanent support, since without the possibility of recalcitrance, power would be equivalent to a physical determination)."

¹¹²Alan Schrift, "Reconfiguring the Subject as a Process of Self: Following Foucault's Nietzschean Trajectory to Butler, Laclau and Mouffe, and Beyond," New Formations, 25, Summer 1995, p32.

¹¹³"Afterword by Michel Foucault: The Subject and Power," in Hubert L. Dreyfus and Paul Rabinow, Michel Foucault: Beyond Structuralism and Hermeneutics, p212

¹¹⁴The History of Sexuality. Volume 1: An Introduction, p100.

¹¹⁵Ibid, p101.

¹¹⁶Ibid, p96.

¹¹⁷Wendy Brown, "Wounded Attachments," Political Theory, 21:3, August 1993, pp390-410, p397.

¹¹⁸Ibid.

¹¹⁹Ibid.

¹²⁰Joan Copjec, Read My Desire: Lacan Against the Historicists, Cambridge, MA, The MIT Press, 1994.

¹²¹Ibid, p20.

¹²²Bodies that Matter: On the Discursive Limits of "Sex", p249.

¹²³Read My Desire: Lacan Against the Historicists, p14.

¹²⁴Ibid, p17. As Copjec adds, in Foucault's analysis, "One becomes visible - not only to others but to oneself - only through (by seeing through) the categories constructed by a specific, historically defined society." (p17)

¹²⁵Ibid, p24.

¹²⁶Ibid, p25.

¹²⁷Slavoj Zizek, The Sublime Object of Ideology, London, Verso, 1989, pp80-88.

¹²⁸Martin Heidegger, "Time and Being," in On Time and Being, New York, Harper and Row, 1972, pp1-25, p8.

¹²⁹Martin Heidegger, "Building, Dwelling, Thinking," in Basic Writings from Being and Time (1927) to The Task of Thinking (1964), pp319-341, p330. As he puts it, "The banks emerge only as the bridge crosses the stream. The bridge designedly causes them to lie across from each other. One side is set off against the other by the bridge. Nor do the banks stretch along the stream as indifferent border strips of the dry land. With the banks, the bridge brings to the stream the one and the other expanse of the landscape lying

behind them. It brings stream and bank and land into each other's neighbourhood. The bridge gathers the earth as a landscape around the stream....[Therefore,] if it is a true bridge it is never first of all a mere bridge and then afterward a symbol....The location is not already there before the bridge is. Before the bridge stands, there are of course many spots along the stream that can be occupied by something. One of them proves to be a location, and does so because of the bridge. Thus, the bridge does not first come to a location to stand in it: rather, a location comes into existence only by virtue of the bridge. The bridge is a thing; it gathers...." pp330-32.

¹³⁰As Heidegger notes, "Equipment - in accordance with its equipmentality - always is *in terms of* its belonging to other equipment: ink-stand, pen, ink, paper, blotting pad, table, lamp, furniture, windows, doors, room. These 'Things' never show themselves proximally as they are for themselves, so as to add up to a sum of *realia* and fill up a room....[Instead,] equipment can genuinely show itself only in dealings cut to its own measure...[So for example], the hammering itself uncovers the specific 'manipulability' of the hammer. The kind of Being which equipment possesses - in which it manifests itself in its own right - we call "*readiness-to-hand*." See Being and Time, p97-98. The overall point, of course, is that it is the context in which things appear together which withdraws in the appearance of Being. What withdraws is therefore the performance which takes place in dwelling, gathering, hammering etc. We can carry this analysis through to Heidegger's account of time where he argues that "It is thus inadmissible to say that future, past and present are before us "at the same time." Yet they belong together in the way they offer themselves to one another....But what do they offer to one another? Nothing other than themselves - which means: the presencing which is given in them. With this presencing there opens up what we call time-space....Time-space is now the name for the openness which opens up in the mutual self-extending of futural approach, past and present." See "Time and Being," in On Time and Being, p14.

¹³¹"Structure, Sign, and Play in the Discourse of the Human Sciences," in Writing and Difference, p289.

¹³²Thus, in addition to using the Heideggerian problematic as a way of introducing and explaining Derrida's work, this strategy has the further advantage of distancing Derrida from Heidegger and thus disarming those critics who would attempt to emasculate or police Derrida's critical significance by arguing that he is nothing but Heidegger. As Gayatri Spivak has noted, "There is a great deal of 'nothing-but-ism' practiced on Derrida within philosophy in the United States: nothing but Heidegger, nothing but Hegel, nothing but the poor man's Nietzsche, nothing but mysticism, nothing but Wittgenstein even." "Interview with *Radical Philosophy*," in Gayatri Chakravorty Spivak, The Post-colonial Critic: Interviews, Strategies, and Dialogues, Sarah Harasym ed., p134.

¹³³"Differance," in Margins of Philosophy, p23-24.

¹³⁴This mixed-metaphor was inspired by Homi Bhabha's use of a similar formulae in his account of colonial mimicry, where is suggested that the colonial subject subverted imperialism by virtue of being "not-quite-not-white." Homi Bhabha, "Of Mimicry and Man: The Ambivalence of Colonial Discourse," October, 28, 1984, pp125-33, p132.

¹³⁵Jane Gallop makes a similar argument in her essay, "Women in Spurs and Nineties Feminism," where she suggests that "Derrida's timely intervention called into question a certain essentialising of woman in seventies feminism. No longer in that era, we can see that, however much it questioned seventies "woman," Spurs was not beyond what it questioned but an engagement with it, sharing the assumption that, in thinking about women, what we have since called gender was the only pertinent category and that the only difference that was sexual was the distinction male/female." Jane Gallop, ""Women" in Spurs and Nineties Feminism," in Ellen K. Feder, Mary C. Rawlinson, and Emily Zakin, eds., Derrida and Feminism: Recasting the Question of Woman, New York, Routledge, 1997, pp7-19, p18.

¹³⁶Jacques Derrida, Spurs: Nietzsche's Styles, Chicago, University of Chicago Press, 1978, p51.

¹³⁷Ibid, p57.

¹³⁸Ibid, p61.

¹³⁹Ibid, p62. As Gallop points out, by focusing on gender alone 1970's feminism was only able to relate the significance of female sexual difference to relations with the opposite sex. However, for nineties feminism, "because differences "between women" have been sexualised, no less than the difference between the sexes, distinctions of class or age operate as sexual difference." (p13) In this respect, reading him today, "Derrida seemed suddenly out of it, stuck on a single, binary notion of sexual difference when we could see multiple sexual differences all around." (p18) Jane Gallop, ""Women" in Spurs and Nineties Feminism," in Ellen K. Feder, Mary C. Rawlinson, and Emily Zakin, eds., Derrida and Feminism: Recasting the Question of Woman, pp7-19.

¹⁴⁰Jean Baudrillard, Seduction, Montreal, New World Perspectives, 1990, p12.

¹⁴¹Ibid, p13.

¹⁴²Bodies that Matter: On the Discursive Limits of "Sex", p84.

¹⁴³Ibid, p89.

¹⁴⁴See "Choreographies", in Jacques Derrida, The Ethics of the Ear: Otobiography, Transference, Translation, Christie McDonald, ed., Lincoln, NA, University of Nebraska Press, 1985, p172.

¹⁴⁵Ibid.

¹⁴⁶Ibid, p181, 183.

¹⁴⁷Ibid, p184.

¹⁴⁸Ibid, p184-85.

¹⁴⁹As Butler argues in Bodies that Matter: On the Discursive Limits of "Sex," "In a sense, the phallus as I offer it here is both occasioned by Lacan and exceeds the purview of that form of heterosexist structuralism....The offering of the lesbian phallus suggests that the signifier can come to signify in excess of its structurally mandated position; indeed, the signifier can be repeated in contexts and relations that come to displace the privileged status of that signifier." (p90) Thus, the lesbian phallus is a kind of thought experiment which Butler performs in order to show that the threat of castration in fact protects the Symbolic against further threats, thus indicating its ideological status. This point is stated clearly in her most recent work on "gender melancholia" in The Psychic Life of Power: Theories of Subjection. As she notes here, "The oedipal conflict presupposes that heterosexual desire has already been *accomplished*, that the distinction between heterosexual and homosexual has already been enforced (a distinction which, after all, has no necessity); in this sense, the prohibition on incest presupposes the prohibition on homosexuality, for it presumes the heterosexualisation of desire." (p135)

¹⁵⁰See "Freud and the Scene of Writing," in Writing and Difference, p211.

¹⁵¹By relating it to Freud's account of melancholia Butler describes this experience as one of "an unlivable passion and ungrievable loss." (The Psychic Life of Power: Theories of Subjection, p135.) Having not read Freud in sufficient detail at the time of writing this chapter, I was unable to make this interpretive step; which is of course not to say that I would have made it anyway. What provided me with this insight into the repression of homosexual identity was Derrida's understanding of difference and the project I had undertaken to think through the implication for psychoanalysis of the idea that difference persists within identity as the non-decisive repudiation which organises its simultaneous possibility and impossibility. Given that the ego is a signifying system and that Derrida shows that the basis of all signifying systems is fundamentally undecidable, the suggestion by psychoanalysis that this basis can in fact be represented by circumstances surrounding the prohibition of incestuous desire therefore served as an indication that the work of deconstruction performed on the ego by psychoanalysis was not yet fully carried through, insofar as the incest prohibition by definition presupposed that the only form of desire which was possible was heterosexual. My guess is that Butler carries out the same exercise in thinking but goes further and gives it a psychoanalytic point of reference by connecting it to Freud's understanding of melancholia. The irony of this, perhaps, is that

it is indeed Derrida rather than Foucault who emerges as the key figure through which Butler seeks to destabilise psychoanalysis.

¹⁵²Looking ahead, in my case study on multiracial identity in America I explore the press reporting of interracial families as an example of one of these other sites.

¹⁵³As Derrida suggests in his essay *Differance*, "[T]he subject (in its identity with itself, or eventually in its consciousness of its identity with itself, its self-consciousness) is inscribed in language, is a "function" of language, becomes a *speaking* subject only by making its speech conform to the system of the rules of language as a system of differences, or at very least by conforming to the general law of *difference*...." "Differance" in *Margins of Philosophy*, p15.

¹⁵⁴See Freud's essay "Fetishism," in *Sexuality and the Psychology of Love*, New York, Collier Books, 1974, pp214-220. As he puts it here, "To put it plainly: the fetish is a substitute for the woman's (mother's) phallus which the little boy once believed in and does not wish to forego....[In other words,] what is possibly the last impression received before the uncanny traumatic one is preserved as a fetish." (p215 and p217)

¹⁵⁵Baudrillard uses the term "strange attractor" in a number of his texts, though I think it first appears in *The Transparency of Evil: Essays in Extreme Phenomena*, New York, Verso, 1993. Most recently he has used it to explain the present fascination with the end of the millennium. See *The Illusion of the End*, Stanford, Stanford University Press, 1994. The key point here, which I have attempted to make throughout, is that the concept of seduction is necessary to explain the source of agency which inheres in the Symbolic once it is decentered from the psychoanalytic focus on heterosexual difference. This is the point which I think Baudrillard is getting at in his own critique of Lacan in *Seduction*, where he suggests that, unlike Freud, Lacan saw the possibility of seduction in his account of the point de capiton, but then fell back from its critical possibilities by reinscribing Freud's account of the incest prohibition and the heterosexual arrangement of sexual difference as the identification which must take place here. (p58) This is not to say that seduction is all that is necessary to explain identification, but it appears to cover the question from the point of view of the object when this is thought from within an understanding of difference. One of its most significant effects is to force us rethink Foucault's account of power as productive. That is to say, for Foucault power is productive because its exercise in and through discourse constitutes individuals in their Being. However, as Baudrillard makes clear in his account of seduction and in his critique of Foucault, there is a moment of seduction at work in discourse which is necessary if power is to be productive. Seduction is therefore a productive form of power insofar as it explains not merely the nature of discourse as a system of signifiers which circulate within, and so constitute, each others referential space but also why individuals identify their Being with certain discourses and certain signifiers. That is to say, if we take the position that both the subject and the object are originally floating signifiers (ie. originally undecidable in their being) then seduction defines the power which exists in

the object as a supplement which provides the (im)possibility of completing the referential context which allows the subject to be represented *as such*. Any object is therefore potentially seductive insofar as its inscription with certain fantasy projections allows it to serve as a signifier for the subject. As I shall explain shortly in another footnote, the inability to represent anything is the key to representing everything. The point, then, is that just as Baudrillard does highlight a limitation in Foucault's account of power, so Baudrillard never finally escapes the idea that the exercise of power is productive. Instead, I think that his position falls into line with the Derridean reading of Foucault which I have set out in this chapter. In this respect, there is a necessary connection between Derrida's understanding of *differance* and Baudrillard's account of seduction, something which I shall also try to illustrate in the footnotes which appear between here and the close of the chapter.

¹⁵⁶In other words, as a subject which is such because it recognises its subjectivity as objective, that is, as something which it holds in common with others. As we see, at this point Being is mediated by the world of social relations which comes after the foreclosure of the mother as the possibility of unmediated Being.

¹⁵⁷As Derrida suggests in his essay "Differance," "There is no essence of *differance*; it (is) that which not only could never be appropriated in the *as such* of its name or its appearing, but also that which threatens the authority of the *as such* in general, of the presence of the thing itself in its essence. [Therefore,] *differance* has no name in our language....there is no *name* for it at all...[Instead, it] unceasingly dislocates itself in a chain of differing and deferring substitutions." To emphasise the point he is making here, he adds that "This unnamable is not an ineffable Being which no name could approach: God, for example. This unnamable is the play which makes possible nominal effects, the relatively unitary and atomic structures that are called names...[so that] there has never been, never will be, a unique word, a master name." "Differance," in Margins of Philosophy, p25-27.

¹⁵⁸See Bodies that Matter: On the Discursive Limits of "Sex", p218.

¹⁵⁹This attempt to reformulate the Imaginary leads me back to Baudrillard's critical intervention into psychoanalysis, and especially to his suggestion that, "The question is this: is there room to offer an hypothesis of the unconscious - this energy and affective potential which...opposes its primary to its secondary processes - an hypothesis in terms of the poetic process? Evidently everything hangs together: if the unconscious is this irreversible agency, then the duality of the primary and secondary processes is also irreducible, and the work of meaning can only consist in the return of the repressed....Conversely, however, the mere hypothesis of a different order, a symbolic order that provided the economy of the unconscious, prohibition, and repression and which basically resolved the distinction between the primary and secondary processes, is enough to relativise the whole psychoanalytic perspective...on its own terrain, in the analysis of the psyche, neurosis and the cure. To turn to Mannoni again, it cannot be

ruled out that psychoanalysis, which originates from the distinction between primary and secondary processes, will one day die when this distinction is abolished. The symbolic is already *beyond the psychoanalytic unconscious*, beyond libidinal economy, just as it is beyond value and political economy." As he continues, "We must see that the symbolic processes (reversibility, anagrammatic dispersal, reabsorption without residue) are not at all mixed up with the primary processes (displacement, condensation, repression)...The difference between the symbolic and the libidinal unconscious, today largely effaced by the privilege of psychoanalysis, must be re-established to prohibit psychoanalysis from encroaching where it has nothing to say." This therefore supports his earlier suggestion that "The effect of the real is only therefore the structural effect of the disjunction between two terms." Symbolic Exchange and Death, p236-37 and p133.

¹⁶⁰Derrida's point here is not that the postal system always delivers letters at the "wrong" destination, but that since there is no natural referent for any letter, word, or phrase, the danger of misdirection constitutes the internal possibility of any sending. In other words, to suggest that a letter has arrived at the wrong destination presupposes that there is a destination which in its essence is not governed by undecidability. On this see Derrida's essay on Lacan's reading of Edgar Allan Poe's essay "The Purloined Letter." Jacques Derrida, "Le facteur de la verite," in The Post Card, Chicago, University of Chicago Press, 1987, pp411-497.

¹⁶¹Jean Baudrillard, Symbolic Exchange and Death, London, Sage, 1993. The idea of "fatality" also comes from Baudrillard, though of course it is also implicit in Derrida's notion of the trace, which can be seen in the example of speech and writing which we explored earlier. Thus, we would say that because it is subject to differance, that is, because speech as self-identity (or what amounts to the same thing, the self-identity of speech) differs within itself at the moment of enunciation, that the fatality of speech is that it can establish no meaning outside of writing. In other words, its fatality is that it is subject to the same unceasing dislocations as differance/difference. For Baudrillard's discussion of fatality see his Fatal Strategies, New York, Semiotext(e), 1990.

¹⁶²As the wording of this sentence is intended to indicate, what I am suggesting here is that there is an intimate connection between Derrida's account of differance and Baudrillard's account of seduction insofar as Derrida's account of differance as the play or substitution of signifiers without a final or original signified to refer back to suggests that the agency which is to be found in the object is that of seduction. That is to say, marked by differance the object seduces because the inability to actually represent anything means that it can in fact represent everything. In other words, the object is seductive in the sense that its representation takes place in a manner consistent with Derrida's understanding of the supplement. That is, the object is seductive because as a floating signifier its symbolic space can represent anything; specifically, it is seductive because it allows "the subject" (which at this point in the process of identification its itself still a floating signifier) to represent an object and thus represent its-self as a subject. The key point here is that as a floating signifier the object will not a priori

represent the subject as heterosexual but will instead leave the location of sexual desire undecidable. As I will suggest in the next paragraph, this has implications not merely for how our ego ideal is constructed but more importantly our ideal ego as well. In other words, we are at the point where we are beginning to understand how the self is constituted as a subject when there is nothing in the object system (the decentred Symbolic) for it to hold onto. However, as we see here this is a very important nothing because it is not in fact "nothing" in the sense of a particular nothing which is opposed to something, but rather undecidability itself; the undecidability which inhabits the object and which then allows identification to take place. It is therefore undecidability which links difference to seduction.

¹⁶³Jacques Derrida, "Sending: On Representation," Social Research, 49, 1982, pp294-326, p324.

¹⁶⁴Butler briefly indicates the possibility of this reading of the Imaginary in her concluding thoughts on the lesbian phallus. As she notes here, "If these central identifications cannot be strictly regulated, then the domain of the imaginary in which the body is partially constituted is marked by a constitutive vacillation." That is to say, "If the heterosexualisation of identification and morphogenesis is historically contingent, however hegemonic, then identifications, which are always already imaginary, as they cross gender boundaries, reinstitute sexed bodies in variable ways. In crossing these boundaries, such morphogenetic identifications reconfigure the mapping of sexual difference itself." See Bodies that Matter: On the Discursive Limits of "Sex," p90-91.

¹⁶⁵The idea of taking this phrase as a point of reference came from Derrida's essay on Kafka which he titles, following the essay by Kafka of which he is offering a reading, "Before the Law." Derrida's essay identifies some of the issues concerning representation which I am going to use this phrase to examine, but his focus is directed primarily towards deconstructing the law rather than the subject and the law. Derrida's essay is to be found in Kafka and Contemporary Criticism, Alan Udolf ed., Bloomington, Indiana University Press, 1987.

¹⁶⁶"Sending: On Representation," p295.

¹⁶⁷Ibid, p303.

¹⁶⁸Jacques Derrida, "The Law of Genre," in Glyph, 7, 1980, pp176-232, p224.

¹⁶⁹"Sending: On Representation," p325.

¹⁷⁰Ibid.

¹⁷¹Ibid.

¹⁷²Immanuel Kant, Critique of Pure Reason, unabridged edition, New York, St. Martin's Press, trans. Norman Kemp Smith, 1965; Critique of Practical Reason, Indianapolis, Bobbs-Merrill Educational Publishing, trans. Lewis White Beck, 1978; The Critique of Judgment, Oxford, The Clarendon Press, trans. James Creed Meredith, 1980.

¹⁷³Martin Heidegger, Kant and the Problem of Metaphysics.

¹⁷⁴Ibid, p110.

¹⁷⁵Ibid.

¹⁷⁶Critique of Pure Reason, B271-A224, p242.

¹⁷⁷Ibid, A141, p183.

¹⁷⁸Ibid, A146, p186.

¹⁷⁹Ibid, B273, p243.

¹⁸⁰Ibid, A226, p243.

¹⁸¹Ibid, B182, p183.

¹⁸²Ibid, B152, p165.

¹⁸³Ibid, B151, p165.

¹⁸⁴As Kant suggests, "We cannot think an object save through categories; we cannot know an object so thought save through intuitions corresponding to these concepts....Consequently, there can be no a priori knowledge, except of objects of possible experience." Ibid, B165-B166, p173-74. He enlarges on this point in the Critique of Judgment, (Part One, "The Critique of Aesthetic Judgment") where he notes that "Intuitions are always required to verify the reality of our concepts. If the concepts are empirical the intuitions are called *examples*: if they are pure concepts of the understanding the intuitions go by the name of *schemata*. But to call for a verification of the objective reality of rational concepts, ie. of ideas,...is to demand an impossibility, because absolutely no intuition adequate to them can be given." (59:351, p221)

¹⁸⁵As he observes, "the moral principle itself serves as a principle of the deduction of an inscrutable faculty which no experience can prove but which speculative reason had to assume as at least possible (in order not to contradict itself in finding among its cosmological ideas something unconditional in its causality). This is the faculty of freedom, which the moral law, itself needing no justifying grounds shows to be not only possible but actual in beings which acknowledge the law as binding upon them. The

moral law is, in fact, a law of causality through and thus a law of the possibility of a supersensuous nature, just as the metaphysical law of events in the world of sense was a law of the causality of sensuous nature; the moral law thus defines what speculative philosophy had to leave undefined. That is, it defines the law for a causality the concept of which was only negative in speculative philosophy, and for the first time it gives objective reality to this concept." Critique of Practical Reason, p49.

¹⁸⁶As he adds in the same place, "This kind of credential for the moral law, namely, that it is itself demonstrated to be the principle of the deduction of freedom as a causality of pure reason, is a sufficient substitute for any a priori justification, since theoretical reason had at least to assume the possibility of freedom in order to fill one of its own needs." Ibid.

¹⁸⁷Ibid, p57-58. This resolves the third of the four antinomies of pure reason. As Kant notes in the Critique of Pure Reason, "The reader here should be careful to observe that in what has been said our intention has not been to establish the reality of freedom as one of the faculties which contain the cause of the appearances of our sensible world...Freedom here is being treated only as a transcendental idea whereby reason is led to think that it can begin the series of conditions in the field of appearance by means of the sensibly unconditioned, and so becomes involved in an antinomy with those very laws which it itself prescribes to the empirical employment of the understanding. What we have alone been able to show, and what we have alone been concerned to show, is that this antinomy rests on a sheer illusion, and that causality through freedom is at least not incompatible with nature." (A558/B586, p479)

¹⁸⁸As he notes, "The action which is objectively practical according to this law excludes inclination from its determining grounds is called duty; and, because of this exclusion, in the concept of duty there is that of practical constraint, ie., determination of actions, however reluctantly that may be done." Critique of Practical Reason, p83.

¹⁸⁹Ibid, p71.

¹⁹⁰The Critique of Judgment, (Part One, "The Critique of Aesthetic Judgment") 26:252, p99-100.

¹⁹¹As Kant observes, "[P]recisely because there is a striving in our imagination towards progress ad infinitum, while reason demands absolute totality, as a real idea, that same inability on the part of our faculty for the estimation of the magnitude of things of the world of sense to attain to this idea, is the awakening of a feeling of a supersensible faculty within us." (Ibid, 25:250, p97) (In the presentation of Kant's account of the beautiful and the sublime which I am offering here readers will quickly see that I am placing greater emphasise on the sublime than the beautiful even though Kant does indicate that beauty is a symbol of morality. As we shall see, however, my suggestion here is that the sublime is ultimately more significant in giving an insight into the

supersensible realm within us. This view is supported by John H. Zammito in The Genesis of Kant's Critique of Judgment where he points out that "The sublime was added late [to the Analytic of Aesthetic Judgment], and it was added precisely to establish a much more substantial relation between the aesthetic experience and the ethical one. While the analogy of the *form* of the judgment of taste with the moral judgment provided the original insight leading to the transcendental grounding of the judgment of taste, Kant did not initially feel prepared to press the analogy from form to substance. He had not yet seen the full potential of the idea of the symbol. But with his elaboration of the theory of symbolism, the sublime came to play a crucial mediating role in connecting the aesthetic with the ethical. The sublime was the aesthetic experience which par excellence symbolised the moral dimension of human existence." John H. Zammito, The Genesis of Kant's Critique of Judgment, Chicago, University of Chicago Press, 1992, p278-79. I would like to point out that I reviewed Zammito's text *after* I had completed this chapter and that my reading of Kant was therefore not influenced by it or by any other secondary source, with the one exception of Heidegger's text on Kant which as I have pointed out is confined to the first Critique.

¹⁹²As Kant notes, "[T]rue sublimity must be sought in the mind of the judging Subject, and not in the Object of nature that occasions this attitude by the estimate formed of it." *Ibid*, 26:256, p104.

¹⁹³*Ibid*, 49:314, p176.

¹⁹⁴As he argues, "If, now, we attach to a concept a representation of the imagination belonging to its presentation, but inducing solely on its own account such a wealth of thought as would never admit of comprehension in a definite concept, and, as a consequence, giving aesthetically an unbounded expansion to the concept itself, then the imagination here displays a creative activity, and it puts the faculty of intellectual ideas (reason) into motion - a motion, at the instance of a representation, towards an extension of thought, that, while germane, no doubt, to the concept of the object, exceeds what can be laid hold of in that representation or clearly expressed." *Ibid*, 49:315, p177.

¹⁹⁵*Ibid*, 29:267, p118.

¹⁹⁶*Ibid*, 28:264, p114.

¹⁹⁷Martin Heidegger, Kant and the Problem of Metaphysics, p161.

¹⁹⁸See The Critique of Judgment, (Part One, "The Critique of Aesthetic Judgment"), 57: 344-345, p213

¹⁹⁹As Kant in fact remarks, "[I]t is only *presupposition* of this idea within us, and in relation to it, that we are capable of attaining to the idea of the sublimity of that Being which inspires deep respect in us...." (My emphasis.) *Ibid*, 28:264, p114. Or as he notes

on another occasion, "the mere ability even to think the given infinite without contradiction, is something that requires the presence in the human mind of a faculty that is itself supersensible. 26:254, p103. Elsewhere he also argues that when in judgments of the sublime "the judgment refers the imagination to reason, as a faculty of ideas, we do so only under *a subjective presupposition*, (which, however, we believe we are warranted in making,) namely, that of *the moral feeling in man*. And, on this assumption, we attribute necessity to the latter [sublime] judgment also." 29:266, p116. (My emphasis.)

²⁰⁰See my reference to his interview "How an 'Experience-Book' is Born" in the text Remarks on Marx in chapter two.

²⁰¹Michel Foucault, "A Preface to Transgression," in Michel Foucault: Language, Counter-Memory, Practice, Donald F. Bouchard (ed), Ithaca, Cornell University Press, 1977. As he suggests here "The limit and transgression depend upon each other for whatever density of being they possess: a limit could not exist if it were absolutely uncrossable and, reciprocally, transgression would be pointless if it merely crossed a limit composed of illusions and shadows." But can the limit have a life of its own outside of the act that gloriously passes through it and negates it? What becomes of it after this act and what might it have been before? For its part, does transgression not exhaust its nature when it crosses the limit, knowing no other life beyond this point in time? And this point, this curious intersection of beings that have no other life beyond this moment where they totally exchange their beings, is it not also everything which overflows from it on all sides?" Ibid, p34.

²⁰²Michel Foucault, "Maurice Blanchot: The Thought from Outside," in Michel Foucault/Maurice Blanchot, New York, Zone Books, 1987.

²⁰³Martin Heidegger, Being and Time, 2.3, 308, p356.

²⁰⁴Ibid.

²⁰⁵Being and Time, 2.4, 349, p400.

²⁰⁶Perhaps more importantly, the sublime is then also consistent with Heidegger's understanding of "the uncanny" in Being and Time. As Heidegger points out here, "Uncanniness...puts Dasein's Being-in-the-world face to face with the "nothing" of the world." (276, p321) In the sublime, then, authentic human existence is revealed as "the Self which has been individualised down to itself in uncanniness." (277, p322) Perhaps even more significantly, Heidegger suggests that "Uncanniness reveals itself authentically in the basic state-of-mind of anxiety...[so that] Dasein is anxious with anxiety about its ownmost potentiality-for-Being." (276, p321) Given that Freud also associates the uncanny with anxiety (See "The Uncanny," The Standard Edition of the Complete Works of Sigmund Freud, Vol.17, 1917-1919, London, The Hogarth Press and the Institute of Psycho-analysis, 1975, pp217-253), especially with those "danger situations" which bring

the ego back to the thought of that "traumatic situation" which surrounded the loss of the mother as the object which centres libidinal desire, the connection between Heidegger and Freud, and most importantly the connection between phenomenology and psychoanalysis which this opens up, is something which I believe has important critical consequences, not least because it provides an alternative intellectual path to the questions which Judith Butler has been raising recently in her discussion of Freud's concept of melancholia and its relationship to Derrida's understanding of the trace. That is to say, reading Heidegger closely at those moments when Freud's terminology emerges as a trace of psychoanalysis within his text invites us to think the possibility that besides Being-in-the-world authentic human existence must also involve Being-melancholy, and that by implication the experience of melancholia represents the Derridean equivalent of Kant's sublime insofar as the splitting of the ego in its constitutive moment points towards that elemental limit-situation where it is also before the "nothing" of the world, provided of course we remember to mark this "nothing" with the movement of unceasing dislocation which Derrida associates with the trace of/as undecidability and keep in mind that this means that the ego is never finally determined around a privileged site of splitting. (Note: Freud's use of the terms "danger situation" and "traumatic situation" are to be found in Inhibitions, Symptoms, and Anxiety, London, The Hogarth Press, 1949. Check the index for Freud's numerous references to these terms.)

²⁰⁷I have already discussed the critical significance of Derrida's reading of differance at some length in the first chapter of the introduction. Here I am putting it to work in my reading of Heidegger and Kant. If readers should need a recap at this stage I would suggest referring back to this earlier discussion or to part one where it was continued.

²⁰⁸Kant and the Problem of Metaphysics, p108.

²⁰⁹Ibid.

²¹⁰Ibid, p109.

²¹¹In order that any critical reaction to this terminology should not be misdirected, I must point out that this term is my own construction; though of course its formulation is inspired by Heidegger.

²¹²Judith Butler, "Melancholy Gender/Refused Identification," in The Psychic Life of Power: Theories of Subjection. Please note that I am not suggesting that Butler refers to Heidegger or even that she would support the line of argument that I am making here, though of course she might.

²¹³As this suggests, Butler's work on melancholic incorporation makes an important contribution to the issues which I am raising in this chapter. However, one of the things which I think has become apparent is the way in which this idea is in some sense gestured at by the way Kant resolves the antinomies set up by his logical deductions

through an act of presupposition. As in the case of melancholia, the presupposition haunts what it allows to be supposed like a specter, so that a judgment of the sublime is haunted by the presupposition which it must make about the presence of a moral feeling in man. Of course, this is made even more apparent in Heidegger's formulation of Dasein through such terms as Being-there or Being-with; and as we know Butler links her use of melancholia to Derrida's use of the "trace" and therefore back to differance. However, as we saw above, what is missing from Heidegger's account of Being-there is the psychoanalytic idea of Being-not-there which Derrida's reading of the trace brings to our attention. As a passing shot, it is certainly worth noting that Kant in fact identifies melancholy with the sublime in the Critique of Judgment. As he suggests here, "[E]ven melancholy, (but not dispirited sadness,) may take its place among the vigorous affections, provided it has its roots in moral ideas. If, however, it is grounded upon sympathy, and, as such, is lovable, it belongs only to the languid affections. And this serves to call attention to the mental temperament which in the first case alone is sublime." Part One, "The Critique of Aesthetic Judgment," 29:276, p131. In this respect, I would add that if we rearticulate Kant's understanding of melancholy within Butler's formulation then we have a further justification for the Derridean interpretation of the sublime which I have put forward in this chapter. The important thing here is that melancholia then marks the point where the law of non-contradiction can only be operationalised through a moment of presupposition. This, I think, is the context in which a Kantian reading of gender melancholia would appear.

²¹⁴Sigmund Freud, Totem and Taboo: Some Points of Agreement Between the Mental Lives of Savages and Neurotics, London, Routledge and Kegan Paul, 1950, p141.

²¹⁵Ibid.

²¹⁶Ibid, p143.

²¹⁷Ibid, p143.

²¹⁸Martin Heidegger, Being and Time, p330.

²¹⁹Ibid.

²²⁰To be fair to Freud, in his later work he indicates his awareness of the paradox which surrounds the experience of guilt at the primal scene, and in fact his explanation is broadly analogous to the idea of thrownness which our reading of Heidegger has suggested. Therefore, where Heidegger maintains that for human beings authentic existence is to not have power over our ownmost Being, Freud makes the same point when he attempts to "resolve" the tension between feeling and deed at the primal scene. For where he poses the question in Civilisation And Its Discontents, London, The Hogarth Press, 1975, "Are we to assume that [at that time] a conscience and a sense of guilt were not, as we have proposed, in existence before the deed? If not, where, in this

case, did the remorse come from?" (p68), in his response we find that the thrownness in which human beings are unable to explain their feelings ontologically is reproduced in "the primordial ambivalence of feeling towards the father" which surfaces in the oedipus complex. (Ibid.) That is, the sons were thrown inasmuch as they "hated him, but they loved him too." (Ibid.) It is this ambivalence which means that like authentic human existence the sons find that they never have power over their ownmost Being. Instead, for both Heidegger and Freud, power over this Being is to be found in an "elsewhere" which cannot be represented. As Freud makes clear in another of his later texts (The Ego and the Id, New York, W.W. Norton, 1962.), as the site of our ownmost Being the super-ego is out of our control insofar as its subordination of our ego serves as the displaced site of libidinal desire. That is, the ego lacks control over its ownmost Being in that its subjection to the critical agency of the super-ego allows the excess libido created by the loss of the mother as a desired object to be "resolved" within the subject. As Freud points out, "the super-ego is always close to the id and can act as its representative *vis-a-vis* the ego." (p39) Even with the resolution of the oedipus complex, then, the subject remains "thrown" within itself by the splitting of the ego in the defensive move which constitutes it. For as Freud also notes "the ego is formed to a great extent out of identifications which take the place of abandoned cathexes by the id." (p38) That is, at the moment when the mother is lost as an object of primary identification the ego "withdraws libido from the id and transforms the object-cathexes of the id into ego structures. With the aid of the super-ego, in a manner that is still obscure to us, it draws upon the experiences of past ages stored in the id." (p45) As he adds a little later, the ego offers itself as a libidinal object to the id. (p46) Therefore, the splitting of the ego into ego and super-ego so that the ego depends for its sense of critical agency on the super-ego is in some sense the psychoanalytic equivalent of what Heidegger is describing more phenomenologically in the relationship which Dasein has with the there of its Being-there, where through leaving us Being-guilty Being-there represents our source of moral awareness and our critical agency. In this respect, there are further analogies to be drawn between Freud's account of the function of the super-ego as a critical agency and Heidegger's account of death as the temporality within which authentic existence is revealed. This is not of course death *as such*, but rather the feelings of anxiety which surround our anticipation of death. As I have suggested already, the critical potential of this analogy appears at the point where a Derridean intervention into psychoanalysis and phenomenology marks the limits of analogical reasoning as such by showing how the analogy itself operates as another site where the attempt to enforce the law of non-contradiction is set in motion. In this respect, we again need to return to the point where Being-there is overdetermined with Being-not-there: the point which Butler marks with the term gender melancholia.

²²¹As Derrida notes, "At bottom, the specter is the future, it is always to come, it presents itself only as that which could come or come back" Specters of Marx, p39. (This point could also be added to the critique of psychoanalysis given in chapter three. That is to say, it offers another way of moving from a restricted to a generalised negativity insofar as the terms of this restriction - the incest prohibition, which limits the parameters of negativity to heterosexual desire - cannot be represented.)

²²²Being and Time, p328.

²²³As Derrida suggests in his reading of Hamlet in Specters of Marx, we first encounter the King not as one who is alive but as one who appears by coming back. Because of this, in the play the father only relates himself to the law and to political authority as a ghost; as one who has already departed but is called back by Hamlet's need to represent the law. As Derrida notes, "the spirit comes by *coming back*." (p11) Therefore, the primal scene and Hamlet are analogous in that, to use Derrida's words, "*Hamlet* already began with the expected return of the dead King....[I]t figures both a dead man who comes back and a ghost whose expected return repeats itself, again and again." (p10) As I am about to imply, perhaps the spectre which haunts the law is therefore this kind of founding violence which must be destined to repeat itself each time that it is necessary to represent the law. This possibility will of course be of central importance to the chapter which follows.

²²⁴See Hannah Arendt, On Violence, New York, Harcourt, Brace, and World, Inc., 1970. As she says, "Power springs up whenever people get together and act in concert, but it derives its legitimacy from the initial getting together rather than from any action that then may follow." For its part, "violence can be justifiable, but it never will be legitimate." Therefore, she argues that "Violence can always destroy power; out of the barrel of a gun grows the most effective command, resulting in the most instant and perfect obedience. What can never grow out of it is power." p52-53.

²²⁵As he suggests in one of his more recent essays, "[P]ower...does not exist. It never attains existence, that is, the presence of the present. *There is* power, there are *effects* of power, but power does not exist. It is nothing....There is only "force," the quotation marks reminding us that the effect of force is attached to the representative function." "By Force of Mourning," Critical Inquiry, 22, Winter 1997, pp171-192, p190. Interestingly, Baudrillard makes the same point in Seduction, where he argues that "[P]ower seduces by virtue of the reversibility that haunts it, and on which a minor cycle is instituted. No more dominant and dominated, no more victims and executioners. No more *separate* positions: power is realised according to a duel relation, whereby it throws a challenge to society, and its existence is challenged in return. If power cannot be "exchanged" in accord with this minor cycle of seduction, challenge and ruse, then it quite simply disappears. At bottom, power does not exist. The unilateral character of the relation of forces on which the "structure" and "reality" of power and its perpetual movement are supposedly instituted, does not exist. This is the dream of power imposed by reason, not its reality." p45.

²²⁶As he suggests, "Even if, as Foucault seems to suggest, one no longer speaks of power with a capital P, but of a scattered multiplicity of micropowers, the question remains of knowing what the unity of signification is that still permits us to call these decentralised and heterogeneous microphenomena "powers." For my part, without being able to go

much further here, I do not believe that one should agree to speak of "force" or of "power" except under three conditions, at least. A. That one takes account of the fact that there is never any thing called power or force, but only differences of power and force, and that these differences are seen as qualitative as they are quantitative. In short, it seems to me that one must start, as Nietzsche doubtless did, from difference in order to accede to force and not vice versa." Jacques Derrida, "Afterword: Towards an Ethics of Discussion," in Limited Inc., Evanston, Illinois, Northwestern University Press, 1972, p149. I think that we should note here that although Derrida calls upon Foucault's idea that power is no longer to be understood in terms of its having a capital "P" (ie. a centre from which it moves out, as in rather uncritical reflections on judicial and sovereign power), his reference to the lingering question of the unity of signification suggests that he does not believe that Foucault's account of power has taken on board the critical significance of difference. In this respect, it is the founding violence which precludes the unity of signification or the totalisation of the subject which turns Power into power or force. As this suggests, he supports the view of his relationship to Foucault which I indicated in part one.

²²⁷As Derrida suggests in his essay on Levinas, "[E]very reduction of the other to a *real* moment of *my* life, its reduction to the state of empirical alter-ego, is an empirical possibility, or rather eventuality, which is called violence." (p128) As he adds elsewhere, "Violence, then, would be the solitude of a mute glance, of a face without speech, *the abstraction of seeing.*" (p99) "Violence and Metaphysics: An Essay on the Thought of Emmanuel Levinas," in Writing and Difference, pp79-154.

²²⁸As he suggests again in his essay on Levinas, "[W]ithout the thought of Being which opens the face, there would only be pure violence or pure nonviolence. Therefore, the thought of Being, in its unveiling, is never foreign to a certain violence. That this thought always appears in difference, and that the same - thought (and) (of) Being - is never identical, means first that Being is history, that Being dissimulates itself in its occurrence, and originally does violence to itself in order to appear. A Being without violence would be a Being which would occur outside the existent: nothing; nonoccurrence; nonphenomenality. A speech produced without the least violence would determine nothing, would say nothing, would offer nothing to the other; it would not be *history*, it would *show* nothing: in every sense of the word, and first of all in the Greek sense, it would be speech without *phrase*." Ibid, p146.

²²⁹Jacques Derrida, "Signeponge/Signsponge," in Derek Attridge ed., Acts of Literature, New York, Routledge, 1992. See also his more recent text, On The Name, Stanford, CA, Stanford University Press, 1995.

²³⁰Samuel Weber, "In the Name of the Law," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, eds., p233.

²³¹See Aporias, p28.

²³²See for example, "Force of Law: The "Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, eds. Reflecting his earlier suggestion in the essay on Levinas that violence is constitutive of Being, here Derrida applies the same analysis to the law as that whose coming into presence must also be thought. As he puts it, therefore, "The very emergence of justice and law, the founding and justifying moment that institutes law implies a performative force, which is always an interpretive force: this time not in the sense of law in the service of force, its docile instrument, servile and thus exterior to the dominant power, but rather in the sense of law that would maintain a more internal relationship to force, power, or violence." p13. As he adds shortly after, "Here the discourse comes up against its limit: in itself, in its performative power itself. It is what I here propose to call the mystical. Here a silence is walled up in the violent structure of the founding act. Walled up, walled in because silence is not exterior to language." p13-14.

²³³As we have seen already, it is only in the naming of the gift as a gift in the act of giving that the gift is constituted in its self-presence. As I am therefore about to try to show, giving carries a performative force, much in the same way, we might add, that feeling guilty carried a performative force in Freud's account of the primal scene in Totem and Taboo. Derrida also outlines the nature of the performative in his essay titled, "From Psyche: The Invention of the Other," where he suggests that "[W]e are considering the singular structure of an event that seems to produce itself by speaking of itself,...inaugurating or signing its uniqueness, bringing it about, as it were, at the same moment as it also names and describes the generality of its genre...." (p317) Therefore, he notes that "The constative statement is the performative itself since it points out nothing that is prior to itself. Its performance consists in the "constatation" of the constative - and nothing else. A quite unique relation to itself, a reflection that produces the self of self-reflection by producing the event in the very act of recounting it. An infinitely rapid circulation....it all at once shunts the performative into the constative, and vice versa....[T]his is about the impossible distinction between fiction and autobiography." p324-25. See "From Psyche: The Invention of the Other," in Derek Attridge ed., Acts of Literature.

²³⁴See "Declarations of Independence," New Political Science, 15, pp7-15, 1986, p10. Readers should also note Bonnie Honig's discussion of Arendt's reading of the Declaration of Independence in which she attempts a critique which draws from Derrida's readings of this document. See both her chapter on Arendt, "Arendt's Accounts of Action and Authority," in her Political Theory and the Displacement of Politics, Ithaca, Cornell University Press, 1993, and also her essay on the same question titled "Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic," in American Political Science Review, 85:1, March 1991, pp97-113.

²³⁵Derrida, "Declarations of Independence," p10.

²³⁶See "Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, eds., p13.

²³⁷Ibid, p14. Our discussion in the last chapter of the murder of the father at the primal scene exemplifies this point. That is to say, since the feelings of guilt experienced by the sons cannot be explained through a prior law the murder of the father is indeed a "violence without a ground." Indeed, since it is an act of violence for which no one can be held responsible it also represents the point within the law where the opposition between justice and injustice is suspended.

²³⁸Judith Butler, Bodies that Matter: On the Discursive Limits of "Sex", p107.

²³⁹Ibid, p108.

²⁴⁰See again "Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, eds., p38.

²⁴¹Drucilla L. Cornell, "Institutionalisation of Meaning, Recollective Imagination and the Potential for Transformative Legal Interpretation," University of Pennsylvania Law Review, 136, 1988, pp1135-1229, p1220.

²⁴²Ibid, p1221.

²⁴³Jacques Derrida, "The Law of Genre."

²⁴⁴Ibid, p224.

²⁴⁵It may be important to emphasise here that the singularity to which I am referring is not the singularity which readers from within the liberal tradition might associate with the subject of modern individualism. Rather, the Derridean subject, if we might for a moment use such a possessive phrase, is singular because it follows the identificatory structure which Derrida marks with his understanding of the term iteration. In other words, it is because it begins by referring to something else that each act of self-identification does not elaborate on a pre-existing subject but instead performatively reconstitutes that subject in its ownmost possibility-for-Being. Thus, the subject is singular not because it is unitary or isolated but because it is always reproduced. It is therefore singular in the sense that its singularity cannot be reduced to the singularity of any other subject. This is how we should therefore read his suggestion in "Choreographies" that "Each man and each woman must commit [to] his or her own singularity, the untranslatable factor of his or her life and death." (in The Ethics of the Ear, p169.) Derrida elaborates the "structure" within which this singularity takes place in

his essay "Differance," where he suggests that "[T]he subject (in its identity with itself, or eventually in its consciousness of its identity with itself, its self-consciousness) is inscribed in language, is a "function" of language, becomes a *speaking* subject only by making its speech conform - even in so-called "creation," or in so-called transgression - to the system of the rules of language as a system of differences, or at the very least by conforming to the general laws of *differance*...." "Difference," in Margins of Philosophy, p15.

²⁴⁶"The Law of Genre," p226.

²⁴⁷"Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, eds., p22.

²⁴⁸As he says, "The structure which I am describing here is one in which law (*droit*) is essentially deconstructible, where because it is founded , constructed on interpretable and transformable textual strata, or because its ultimate foundation is itself unfounded. The fact that the law is deconstructible is not bad news. We may even say that it is a stroke of luck for politics, for all historical progress." *Ibid*, p14.

²⁴⁹Here Derrida uses the irreducible singularity of the self to oppose the law as the idea of justice to the law as an idea of Right, a system of rules or interpretive conventions mobilised and signified by legal adjudication. As an idea of Right the law is therefore deconstructible because it measures justice in terms of equality where as a measure of the subject equality would reduce the self to a self-identical sameness. In contrast, the idea of Justice cannot be deconstructed since it reflects the singular location of the self. Instead, it is what in fact ensures the possibility of deconstruction. As Derrida puts it, "Justice in itself, if such a thing exists, outside or beyond law, is not deconstructible. No more than deconstruction itself, if such a thing exists. Deconstruction is justice." *Ibid*, p14-15. We get a sense of what this view of justice as iterative Being/Being iterative implies politically in his "Choreographies" interview where he refers to the fact that we are each involved in "an incessant, daily negotiation - individuals or not - sometimes microscopic, sometimes punctuated by a poker-like gamble; always deprived of insurance, whether it be in private life or within institutions. Each man and each woman must commit [to] his or her own singularity, the untranslatable factor of his or her life and death." "Choreographies," in The Ethics of the Ear, p169.

²⁵⁰Drucilla Cornell, "The Violence of the Masquerade: Law Dressed Up as Violence," Cardozo Law Review, 11, 1990, pp1047-1064, p1060.

²⁵¹*Ibid*. The quote from Derrida is also cited on this page.

²⁵²"Force of Law: The Mystical Foundation of Authority," in Deconstruction and the Possibility of Justice, Drucilla Cornell, Michel Rosenfeld, and David Gray Carlson, eds., p44 and 55.

²⁵³Drucilla Cornell, "The Violence of the Masquerade: Law Dressed Up as Violence," p1061.

²⁵⁴Drucilla Cornell, "From the Lighthouse,: The Promise of Redemption and the Possibility of Legal Interpretation," Cardozo Law Review, 11, 1990, pp1687-1714, p1714.

²⁵⁵Drucilla Cornell, "The Violence of the Masquerade: Law Dressed Up as Violence," p1049.

²⁵⁶These three concepts and their historical relationship to the public sphere provide the focus for The Human Condition, Chicago, University of Chicago Press, 1958.

²⁵⁷Hannah Arendt, On Revolution, New York, The Viking Press, 1963.

²⁵⁸As she suggests in her essay on the question of "What is Freedom?", "Action, to be free, must be free from motive on one side, from its intended goal as a predictable effect on the other." (p151) Hence, "Men *are* free - as distinguished from possessing the gift for freedom - as long as they act, neither before nor after; for to *be* free and to act are the same." (p153) Hannah Arendt, "What is Freedom?," in Hannah Arendt, Between Past and Future: Eight Exercises in Political Thought, New York, Penguin, 1987.

²⁵⁹On Revolution, p181.

²⁶⁰As she notes, for the ancient Greeks "being free and the capacity to begin something new coincided. Freedom, as we would say today, was experienced in spontaneity." "What is Freedom?," in Between Past and Future: Eight Exercises in Political Thought, p167.

²⁶¹On Revolution, p235. Here Arendt refers to Jefferson's "feeling of outrage" about the injustice that only his generation would have it in their power "to begin the world over again," and notes his enthusiasm at the news of Shay's rebellion. As Arendt notes, it was only the complete collapse of the French Revolution which dissuaded Jefferson from the idea that the Constitution itself should provide for its own revision at periods roughly equal with the coming and going of generations. p237.

²⁶²As she notes, "There is an element of the world-building capacity of man in the human faculty of making and keeping promises." In this respect, promising offers a non-violent beginning because of its association with acting together. As Arendt also notes, "building and promising, combining and covenanting are the means by which power is kept in existence; where and when men succeed in keeping intact the power which sprang up

between them during the course of any act or deed..." Hence, she concludes that to "combine in the act of foundation by virtue of the making and the keeping of promises... may well be the highest human faculty." See On Revolution, p174-75.

²⁶³Ibid, p207. Her point here is that although acting together carries a moment of arbitrariness it is saved from being illegitimate by the act of promising which it involves. As she argues, "What saves the act of beginning from its own arbitrariness is that it carries its own principle within itself...The absolute from which the beginning is to derive its own validity and which must save it, as it were, from its inherent arbitrariness is the principle which, together with it, makes its appearance in the world." (p214)

²⁶⁴George Kateb, Hannah Arendt: Conscience, Politics, Evil, Oxford, Martin Robertson, 1983, pp15-18, quoted in Joseph M. Schwartz, "Arendt's Politics: The Elusive Search for Substance," Praxis International, 9:1/2, 1989, pp25-48, p27, 31.

²⁶⁵Her response to the social question comes to light somewhat indirectly in her brief discussion of Lenin. Here she suggests that "the problem of poverty is not to be solved through socialisation and socialism, but through technical means; for technology, in contrast to socialisation, is of course politically neutral; it neither prescribes nor precludes any specific form of government....This was one of the not infrequent instances when Lenin's gifts as a statesman overruled his Marxist training and ideological convictions." On Revolution, p60.

²⁶⁶Ibid, p184. Readers might like to note that this situation is opposite to the one which we encountered in Totem and Taboo, where those who violate the law are in fact guilty of nothing outside of the presuppositions (the pre-ontological feeling of respect which we have for the law as the there of our Being-there) which surround the performance of feeling guilty itself.

²⁶⁷Ibid.

²⁶⁸As she suggests, "Thus the amendments to the Constitution augment and increase the original foundations of the American republic; needless to say, the very authority of the American Constitution resides in its inherent capacity to be amended and augmented." Ibid, p203.

²⁶⁹Ibid.

²⁷⁰Ibid.

²⁷¹Another writer who makes this argument is Alan Keenan, in "Promises Promises. The Abyss of Freedom and the Loss of the Political in the Work of Hannah Arendt," Political Theory, 22:2, May 1994, pp297-322. As he notes, "authority as "augmentation" attempts to have it both ways: to insulate the political from the threat that the "necessity" of

foundation poses to freedom *and* from the loss threatened by its lack of foundation. Arendt's "augmentation," that is, presents as a smooth, evolutionary process what is instead a much less stable, even conflictual, relationship of freedom and foundation. And although the concept of augmentation might at first sight seem to be an example of her ideal of "thinking together and combining meaningfully what our present vocabulary presents to us in terms of opposition and contradiction," it actually smoothes over possibilities and difficulties that such a "thinking together" should provoke." (p315)

²⁷²Slavoj Zizek makes a similar suggestion in his Lacanian exposition of the French Revolution, where he argues that "The Jacobin Terror was not a simple aberration from or betrayal of the democratic project, but it was, on the contrary, of a strictly democratic nature." "The King is a Thing," New Formations, 13, Spring 1991, p33.

²⁷³Alan Keenan reaches a very similar conclusion in his reading of Arendt. As he says, "One cannot, then, mourn the repeated "loss" of "the revolutionary spirit...as if one could someday resurrect an experience of the political free from that loss. There can simply be no political action free from the loss of the political and the tendency to forget the freedom that makes it possible....[In other words,] that within the very political action that freedom makes possible there is an unavoidable violation of freedom....[So that] the promised, or free, character of the political can only be preserved by remembering its impurity and incompleteness, and with it the fact that political freedom always comes at a cost - the cost of being implicated in various forms of violence and unfreedom." "Promises, Promises. The Abyss of Freedom and the Loss of the Political in the Work of Hannah Arendt," p319-20.

²⁷⁴As an example of the former, we should note that in 1986 the Supreme Court reviewed the case of Susan Guillory Phipps, a white Louisiana woman who discovered in her forties that she was in fact classified as black by the racial codes which were in place in the state at the time of her birth. In reviewing the case the Court upheld Guillory's official racial identity even though her black ancestor appeared four generations before Guillory. In other words, the Court upheld the one-drop rule. For details of this see "American Chronicles: Black or White," Calvin Trillin, The New Yorker, April 14, 1986, pp62-78.

²⁷⁵Joseph Tussman and Jacobus tenBroek, "The Equal Protection of the Laws," California Law Review, 37:3, September 1949, p341. Given Derrida's reading of the Declaration of Independence, this reference should already raise our critical suspicions.

²⁷⁶Ibid.

²⁷⁷Ibid, p342.

²⁷⁸Ibid, p344.

²⁷⁹Owen M. Fiss, "Groups and the Equal Protection Clause," in Equality and Preferential Treatment, Princeton, Princeton University Press, 1977, p85.

²⁸⁰Michel Rosenfeld, "Affirmative Action, Justice, and Inequalities: A Philosophical and Constitutional Appraisal," Ohio State Law Review, 46, 1985, p875.

²⁸¹See Aviam Soifer, "Reviewing Legal Fictions," Georgia Law Review, 20, 1986; and also Ibrahim J. Wani, "Truth, Strangers, and Fiction: The Illegitimate uses of Legal Fiction in Immigration Law," Cardozo Law Review, 11, 1989, who argues that "fictions continue to pervade the law largely because of their inevitability in supporting the mythology of law as the embodiment of justice derived through reason." (p52) As he also notes, De Tocqueville took the view that American government "rests almost entirely on legal fictions." p51.

²⁸²For a discussion of Shaw and Miller as well as other cases such as Croson which led up to them see for example, Sean P. Dunn, "Colouring Within the Lines - The New Law Regarding Race-Conscious Reapportionment," Ohio State Law Review, 54, 1993; Samuel Issacharoff, "The Constitutional Contours of Race and Politics," The Supreme Court Review, 2, 1995; Michael J. Moffatt, "The Death of the Voting Rights Act or an Exercise in Geometry? - *Shaw v. Reno* Provides more Questions than Answers," Pepperdine Law Review, 22, 1995; Gerald R. Webster, "Congressional redistricting and African-American representation in the 1990's: an example from Alabama," Political Geography, 12:6, November 1993; David Chi-ping Liu, "Creation of Majority-Minority Districts: A Step Towards Voting Equality or Racial Segregation," The George Washington Law Review, 63, 1995; Pamela S. Karlan, "All Over The Map: The Supreme Court's Voting Rights Trilogy," The Supreme Court Review, 7, 1993; T. Alexander Aleinikoff and Samuel Issacharoff, "Race and Districting: Drawing Constitutional Lines After *Shaw v. Reno*," Michigan Law Review, 92, December 1992; Lisa A. Kelly, "Race and Place: Geographic and Transcendent Community in the Post-*Shaw* Era," Vanderbilt Law Review, 49:2, March 1996. Although it is difficult to offer precise citations, these articles have also been useful in shaping the commentary on congressional redistricting in which I have engaged in this chapter.

²⁸³For a description of these terms see Michel Rosenfeld, "Affirmative Action, Justice, and Inequalities: A Philosophical and Constitutional Appraisal," p876.

²⁸⁴Lani Guinier, "Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's Clothes," Texas Law Review, 71, 1993, p1592.

²⁸⁵Joan Copjec, "The Unvermogender Other: Hysteria and Democracy in America," New Formations, 14, Summer, 1991.

²⁸⁶Ibid, p33. As Copjec puts it, "The individual's particularity is thus annulled by the very act of its expression. If one's difference is, by definition, that which escapes recognition,

then any recognition of it will always seem to miss the mark, to leave something unremarked. The subject of democracy is thus constantly hystericised, divided between the signifiers that seek to name it and the enigma that refuses to be named."

²⁸⁷Lani Guinier, "Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's New Clothes," p1602.

²⁸⁸Ibid, p1606.

²⁸⁹Ibid.

²⁹⁰I discuss the racial meaning of passing in part three, as well as the implication which it has for liberal theory.

²⁹¹Lani Guinier, "Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's New Clothes," p1606.

²⁹²Ibid, p1607.

²⁹³Ibid, p1615.

²⁹⁴Deborah Ramirez, "Multicultural Empowerment: It's Not Just Black and White Anymore," Stanford Law Review, 47, 1995, p958.

²⁹⁵Ibid, p962.

²⁹⁶Ibid, p969.

²⁹⁷Juan F. Perea, "Ethnicity and the Constitution: Beyond the Black and White Binary Constitution," William and Mary Law Review, 36, May 1995, p575.

²⁹⁸Ibid, p596.

²⁹⁹Ibid, p597.

³⁰⁰Ibid, p571.

³⁰¹Bijan Gilanshah, "Multiracial Minorities: Erasing the Colour Line," Law and Inequality, 12, 1993, pp183-204, p184. As I noted in the introduction to this thesis, there is a small existing legal scholarship which considers multiracial Americans. Besides Gilanshah, who argues that while the kind of first-stage controls which characterised the anti-miscegenation laws have been overcome by the decision in *Loving v. Virginia*, "the present system perpetuates second-stage non-recognition" by failing to establish a census category which would allow multiracial Americans to self-identify, a number of other

writers have also focused on this question. For example, Deborah Ramirez whose analysis of ethnic identity we have just referred to, suggests that "The emergence and increasing visibility of multiracial Americans is transforming the face of America and forcing lawmakers to reevaluate remedies and programs which rely on simplistic racial classifications." ("Multicultural Empowerment: It's Not Just Black and White Anymore," p964) As she argues, "If these individuals choose to identify themselves in multiracial terms, attempts to impose a single racial classification upon them would relegate their multiracial identities to second-class status." (p966) Meanwhile, in a more general analysis of the limits of colour-blind constitutionalism, Neil Gotanda has argued that "In both constitutional discourse and in larger society race is considered a legitimate and proper means of classifying Americans. Its frequent use suggests that there is a consensus about what the "races" are." ("A Critique of Our Constitution is Colour-Blind," Stanford Law Review, 44:1, November 1991, p23.) While Gotanda's main focus is the way in which these naturalised understandings of race work to reinforce the hierarchy of white and black America, within this his analysis of the rule of hypodescent draws our attention to the fact that "The American legal system today lacks intermediate or "mixed-race" classifications. While the establishment of self-contained Black or white racial categories may seem obvious, an examination of other classification schemes reveals that the American categories are not exhaustive." (p25) At the same time, Kenneth Karst has argued that "The law maintains a vocabulary of identities and sometimes even channels claims (and thus claimants) into recognised identity categories with conventional scripts of behaviour." ("Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation," UCLA Law Review, 43, 1995, p295.) This forms a basis for the observation that "The children of interracial marriages are blurring the social definitions of race in a way that the progeny of unacknowledged interracial sex did not." (p300) In this respect, he argues that if a multiracial box were added to the 2000 census the courts could wait to see if substantial numbers who formerly identified as black reidentified as mixed-race before deciding whether anti-discrimination protection needed to be extended to multiracial identity. (p339) As I will point out in the case study, the ability of the law to foreclose protection for multiracial Americans is also noted by Julie Lythcott-Haims in her analysis of transracial adoption. Within this, she reinforces the views of the other writers noted here that "The "one-drop" rule exposes the myth that Multiracials can choose between their ancestries to determine their own racial identity. This is simply not accurate. Under the "one-drop" rule, the choice is made for them....The "one-drop" rule is so ingrained in the American psyche that Blacks and Whites do not think twice about it." ("Where do Mixed Babies Belong? Racial Classification in America and its Implications for Transracial Adoption," Harvard Civil Rights-Civil Liberties Law Review, 29, 1994, p539.) In the analysis of the relationship between multiracial Americans and the equal protection clause which follows in the main text, I touch on some of the points covered by these writers. However, as readers will see I have constructed my narrative mainly from primary sources which I have researched myself.

³⁰²Both sets of figures are from "Intermarried with Children," Jill Smolowe, Time, Fall 1993, p64.

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- ³⁰³"The "Other" Americans," Gabrielle Sandor, American Demographics, June 1994, p38.
- ³⁰⁴"The Colour Brown," Richard Rodriguez, The Newshour With Jim Lehrer, February 14, 1998. (www.pbs.org)
- ³⁰⁵"More Than Identity Rides On a New Racial Category," Linda Mathews, The New York Times, July 6, 1996, pL7.
- ³⁰⁶"State of Our Unions," Time, July 8, 1996, p16; "Relaxing an Old Taboo," Newsweek, July 15, 1996, p51.
- ³⁰⁷"Study Finds Rising Number of Black-White Marriages," Steven A. Holmes, The New York Times, July 4, 1996, pA16, L.
- ³⁰⁸"What Colour is Black," Tom Morganthau, Newsweek, February 13, 1995, p64.
- ³⁰⁹"The Hard Questions: Race for the Cure," Nathan Glazer, The New Republic, October 7, 1996, p29.
- ³¹⁰"What Colour is Black," Tom Morganthau, Newsweek, February 13, 1995, p64.
- ³¹¹"The Hard Questions: Race for a Cure," Nathan Glazer, The New Republic, October 7, 1996, p29.
- ³¹²"Don't you dare list them as 'other': Multiracial Americans seek full recognition," U.S. News and World Report, April 8, 1996, p56.
- ³¹³"The "Other" Americans," Gabrielle Sandor, American Demographics, June 1994, p39.
- ³¹⁴"Study Finds Rising Number of Black-White Marriages," Steven A. Holmes, The New York Times, July 4, 1996, pA16, L.
- ³¹⁵"Intermarried with Children," Jill Smolowe, Time, Fall 1993, p64.
- ³¹⁶Carlos Fernandez, testimony before House of Representatives hearings to consider the question of adding a multiracial category to the 2000 census, July 25, 1997, www.webcom.com/intvoice. (My emphasis.)
- ³¹⁷"Racial Categories Contested," The Tampa Tribune, December 12, 1995, p6. The article quotes Edwards as arguing that "It goes beyond pride to issues of self-worth and self-identification. The children do not want to be in the position that either parent's heritage should be nullified." The quotation referred to in the text comes from "From the Editor," at the internet magazine Interracial Voice, at www.webcom.com/intvoice. At

this point I need to make readers aware that I cannot guarantee that the articles I have referred to here have not been deleted in the on-going process whereby websites are update. Where it has been possible, that is, where the articles are not published only on a website, I have therefore cited the hardcopy source instead of the website where it is reproduced in order that readers can check my sources if they so desire. It is worth pointing out though, that many websites have archive or search facilities which can be accessed when headline stories are replaced.

³¹⁸"Petri Testifies for "Tiger Woods" Census Bill," April 23, 1997, at www.webcom.com/intvoice.

³¹⁹For a detailed discussion of the one-drop rule see Virginia Dominguez, White By Definition, New Brunswick, New Jersey, Rutgers University Press, 1986; and F. James Davis, Who is Black?: One Nation's Definition, Pennsylvania, Pennsylvania State University Press, 1991.

³²⁰Douglas' statement can be found in the archives of Interracial Voice, at www.webcom.com/intvoice.

³²¹Virginia Dominguez, White By Definition, p2. Dominguez also notes the Susan Guillory Phipps case mentioned above, where as we saw Phipps was a "white" resident of Louisiana who found out at age forty-eight that she had been classified as black by the state's racial statute. Subsequent to the publication of Dominguez's book we find that the case found its way to the US Supreme Court, where in 1986 the court ruled in favour of the state citing a compelling state interest in redressing the legal injustice done to blacks. In other words, the court ruled that protecting the rights of blacks was more important granting the right of racially mixed individuals to choose between being black or white as Phipps demanded. Dominguez in fact cites this justification in several previous court judgments. (p5)

³²²See "Multiracial Census Category" in The Newshour with Jim Lehrer, July 16, 1997. (Text available at www.webcom.com/intvoice and at www.pbs.org.)

³²³"Multiracial Minorities: Erasing the Colour Line," p186.

³²⁴Quoted in "From the Editor," in Interracial Voice, www.webcom.com/intvoice.

³²⁵These possibilities are noted by Gilanshah, in "Multiracial Minorities: Erasing the Colour Line," p201.

³²⁶In a recent interview, Kweisi Mfume (Chairman and CEO of the NAACP) suggested that "The interesting thing about all of this is that the NAACP believes that we should not rush into a decision that would change the way of counting for census purposes unless we ask ourselves, "What is the overall impact, both pro and con?" I don't believe those

questions have been asked, and I don't believe they have been answered....[For example,] It would be much more difficult with this additional category to measure the effects of discrimination in our community and to be able to adequately redress them....And, thirdly, it is important to point out that the discrimination that mixed-race people find in this society is more a function of their appearance and less a function of how the Census Bureau classifies them. They are discriminated against as if they were Black and certainly by people who don't consider them to be white....Tiger Woods is a case in point with the regrettable remarks of Fuzzy Zoeller, who didn't bother to look at Tiger's ethnicity s defined as multiethnic or multiracial. He just saw him as another n-----r and Zoeller felt free enough and secure enough to be able to - in a willy-nilly fashion - to continue to make those old-fashioned jokes that have haunted the existence of Black people in this country for too long....So what I say is: Be proud of your heritage but know of the reality in which you exist, and that the discrimination you face now and the rest of you life in this country is going to be based up your appearance, and what people see when they see you, and not on how you are defined in the census category." "Black America and Tiger's Dilemma," *Ebony*, July 1997, p29, 34. In the same article, Jesse Jackson argues that "The dilemma for Woods is that his decision was perceived quite differently by Blacks and Whites. While he may see the "Cablinasian" dimension, Fuzzy Zoeller sees him quite differently. And so the politics is that he runs the risk of making Black people feel that he is disassociating himself from Black people and that he is uncomfortable with Black people." (p30, 34) One interesting aspect of the recent debate between multiracial advocacy groups like the AMEA and organisations like the NAACP is the way in which the name "Tiger Woods" has become a site of political contestation, with both sides attempting to deploy the symbolic capital which goes with it. Thus, one theme underlining both Mfume and Jackson's comments is the way in which the experience of Woods awaits other multiracial Americans who attempt to "come-out" in the way that he has. Moreover, as these comments also show Wood's "dilemma" is also used to try to reappropriate mixed-race Americans as black by referring to the legacy of judicial interpretation surrounding the use of the one-drop rule in determining racial classification. From the other perspective, however, the Bill currently working its way through the House of Representatives (House Resolution 830) which would require all federal documentation to recognise mixed-race identity, has been named "The Tiger Woods Bill."

³²⁷Halley notes that the seven states with laws which criminalise homosexual sodomy are Arkansas, Kansas, Kentucky, Missouri, Montana, Nevada, and Texas (p940), and that *Bowers v. Hardwick* defined sodomy as "any sexual act involving the sex organs of one person and the mouth or anus of another." Janet Halley, "The Politics of the Closet: Equal Protection for Gay, Lesbian, and Bisexual Identity," *UCLA Law Review*, 36, 1989, p949.

³²⁸Ibid, p945. Citing recent empirical research which suggests that there are relatively few lifelong homosexuals (4% of white men and 1-3% of women) and "surprisingly few" heterosexuals (63% of men and 61% of single women and 89% of married women) (p939), Halley observes that we "mix homosexual behaviour much more liberally than

we let on" (p940), so that "sexual feelings and activities change; they can be fluid and dynamic. And furthermore, the reality is that feelings, activities, and self-conscious identities may not at all times be congruent." (p945)

³²⁹As she notes, "some homosexuals adopt a gay subjective identity without having had any homosexual sex; others fail to do so despite well settled homosexual experience." (Ibid, p944) Because of this, "The act of assuming a gay or lesbian subjective identity is, for many individuals, a socially contingent one, often postponed until quite late stages in a person's sexual career and sometimes never undertaken at all." (p945)

³³⁰Ibid, p920

³³¹Ibid, p918.

³³²Ibid, p970.

³³³Ibid, p973.

³³⁴Ibid, p933.

³³⁵Ibid, p940.

³³⁶Ibid, p947.

³³⁷Ibid.

³³⁸Ibid, p945. And as Halley adds "Because homosexuality is so stigmatised, individuals are encouraged to maintain a self-deceptively unambiguous heterosexual identity and to protect it eagerly from ambiguities that arise from within as well as from without." (p962)

³³⁹Stuart Hall, "Cultural Identity and Diaspora," in Jonathan Rutherford ed., Identity: Community, Culture, Difference, London, Lawrence and Wishart, 1990, pp222-237, p222.

³⁴⁰Ibid, p226.

³⁴¹Ibid, p227.

³⁴²James Clifford, "Traveling Cultures," in Lawrence Grossberg ed., Cultural Studies, New York, Routledge, 1992, pp96-116, p101.

³⁴³Ibid, p109.

³⁴⁴Ibid, p100.

³⁴⁵Arjun Appadurai, "Disjuncture and Difference in the Global Cultural Economy," Theory, Culture and Society, 7, 1990, pp295-310, p296. Readers should note that I am only touching upon examples from a much larger literature. Other writers whose work I have reviewed but not discussed here include the following: Simon During, "Postcolonialism and Globalisation," Meanjin, 51:2, 1992, pp339-353; Jonathan Friedman, "Being in the World: Globalisation and Localisation," Theory, Culture and Society, 7, 1990, pp311-328; Ulf Hammertz, "Cosmopolitans and Locals in World Culture," Culture, Theory and Society, 7, 1990, pp237-251; Kathleen M. Kirby, "Thinking through the Boundary: The Politics of Location, Subjects, and Space," boundary 2, 20:2, 1993; Lisa Malkki, "Citizens of Humanity: Internationalism and the Imagined Community of Nations," Diaspora, 3:1, 1994, pp41-68; John Sorenson, "Essence and Contingency in the Construction of Nationhood: Transformation of Identity in Ethiopia and its Diasporas," Diaspora, 2:2, 1992, pp201-228.

³⁴⁶As he put it in one interview, "What is striking about the new urban ensembles around Paris...is that there is absolutely no perspective at all. Not only has the street disappeared (that was already the task of modernism) but all profiles have disappeared as well. This is bewildering, and I use existential bewilderment in this new postmodern space to make a final diagnosis of the loss of our ability to position ourselves within this space and cognitively map it. This is then projected back on the emergence of a global, multinational culture that is decentred and cannot be visualised, a culture in which one cannot position oneself." From "Regarding Postmodernism - A Conversation with Fredric Jameson," in Universal Abandon? The Politics of Postmodernism, Andrew Ross ed., Minneapolis, University of Minnesota Press, 1988, p7.

³⁴⁷Stuart Hall, "When was 'The Post-Colonial'? Thinking at the Limit," in The Post-Colonial Question: Common Spaces, Divided Margins, Iain Chambers and Linda Curti eds., London, Routledge, 1996, pp242-260, p247.

³⁴⁸See "Cultural Identity and Diaspora," in Jonathan Rutherford ed., Identity: Community, Culture, Difference, p225.

³⁴⁹Ibid, p230

³⁵⁰Ibid, p234.

³⁵¹Ibid.

³⁵²Gabriel Sheffer, Modern Diasporas in International Politics, London, Croom Helm, 1986, p4.

³⁵³William Safran, "Diasporas in Modern Societies: Myths of Homeland and Return," Diaspora, Spring 1991, pp83-99.

³⁵⁴Ien Ang, "On Not Speaking Chinese: Postmodern Ethnicity and the Politics of Diaspora," New Formations, 24, Winter 1994, pp1-18, p15.

³⁵⁵Ibid.

³⁵⁶Ibid, p17.

³⁵⁷Salman Rushdie, "Imaginary Homelands," in Imaginary Homelands: Essays and Criticism 1981-1991, London, Granta Books, 1991, p10-11.

³⁵⁸Ibid, p10.

³⁵⁹Stuart Hall, "Cultural Identity and Diaspora," in Jonathan Rutherford ed., Identity: Community, Culture, Difference, p235.

³⁶⁰Purnima Mankekar, "Reflections on Diasporic Identities: A Prolegomenon to an Analysis of Political Bifocality," Diaspora, 3:3, 1994, pp349-371.

³⁶¹Ien Ang, "On Not Speaking Chinese: Postmodern Ethnicity and the Politics of Diaspora," p16.

³⁶²Benedict Anderson, Imagined Communities: Reflections on the Origins and Spread of Nationalism, London, Verso, 2nd. ed., 1991, p7.

³⁶³See Aporias, p34. Readers will perhaps note the parallel here between the absolute arrivant and the other who is not merely invented but who also invents, and also with the gift which is not merely given but which also constitutes the giver.

³⁶⁴Homi Bhabha, "Dissemination: time, narrative, and the margins of the modern nation," in Nation and Narration, Homi K. Bhabha ed., London, Routledge, 1990, p4.

³⁶⁵Benedict Anderson, Imagined Communities: Reflections on the Origins and Spread of Nationalism, p24.

³⁶⁶Homi Bhabha, "Dissemination: time, narrative, and the margins of the modern nation," in Nation and Narration, p293.

³⁶⁷Homi Bhabha, "Introduction," in Nation and Narration, p5.

³⁶⁸Ibid.

³⁶⁹Homi Bhabha, "Dissemination: time, narrative, and the margins of the modern nation," in Nation and Narration, p293.

³⁷⁰"The Third Space: Interview with Homi Bhabha," in Jonathan Rutherford ed., Identity: Community, Culture, Difference, London, Lawrence and Wishart, 1990, pp207-221, p211.

³⁷¹Homi K. Bhabha, "Signs Taken for Wonders: Questions of Ambivalence and Authority under a Tree Outside Delhi, May 1817," Critical Inquiry, 12, Autumn 1985, pp145-165, p156.

³⁷²See his "Exploring the Place of Silence," which reviews Salman Rushdie's book East, West, in The Guardian Weekly, October 16, 1994, p29.

³⁷³"More on Power/Knowledge," in Gayatri Chakravorty Spivak, Outside in the Teaching Machine, p45.

³⁷⁴See Gayatri Chakravorty Spivak, "Diaspora's old and new: women in the transnational world," Textual Practice, 10:2, 1996, pp245-269.

³⁷⁵"Subaltern Studies: Deconstructing Historiography," in Gayatri Chakravorty Spivak, In Other Worlds: Essays in Cultural Politics, p201.

³⁷⁶Ibid, p203.

³⁷⁷Ibid.

³⁷⁸"More on Power/Knowledge," in Gayatri Chakravorty Spivak, Outside in the Teaching Machine, p49.

³⁷⁹Ibid, p48-49.

³⁸⁰Ibid. p49.

³⁸¹"Subaltern Studies: Deconstructing Historiography," in Gayatri Chakravorty Spivak, In Other Worlds: Essays in Cultural Politics, p204.

³⁸²Ibid.

³⁸³Ibid, p204.

³⁸⁴"In Living Colours: Tiger Woods is the exception that rules. For his generation, hip isn't just black and white," John Leyland and Gregory Beals, Newsweek, May 5, 1997, p59.

³⁸⁵"All Mixed Up: The Debate on Multiracial status gets out of control," Emil Guillermo, Asianweek, July 12, 1996. (www)

³⁸⁶"Intermarried with Children," Jill Smolowe, Time, Fall 1993, p64.

³⁸⁷bell hooks, Black Looks: Race and Representation, Toronto, Between the Lines, 1992, p145.

³⁸⁸Purnima Mankekar, "Reflections on Diasporic Identities: A Prolegomenon to an Analysis of Political Bifocality," p352.

³⁸⁹Ien Ang, "On Not Speaking Chinese: Postmodern Ethnicity and the Politics of Diaspora," p9.

³⁹⁰Gayatri Chakravorty Spivak, "In a word: *Interview*," in Gayatri Chakravorty Spivak, Outside in the Teaching Machine, p4.

³⁹¹As Heidegger suggests, "We have characterised resoluteness as a way of reticently projecting oneself upon one's ownmost Being-guilty, and exacting anxiety upon oneself...To project oneself upon this Being-guilty, which Dasein is *as long as it is*, belongs to the very meaning of resoluteness. The existential way of taking over this 'guilt' in resoluteness, is therefore authentically accomplished only when that resoluteness, in its disclosure of Dasein, has become *so* transparent that Being-guilty is understood *as something constant*." Being and Time, p353.

³⁹²William E. Connolly, Identity/Difference: Democratic Negotiations of Political Paradox, p42.

³⁹³Ibid.

³⁹⁴Ibid, p43.

³⁹⁵Ibid.

³⁹⁶Slavoj Zizek, Looking Awry: An Introduction to Jacques Lacan Through Popular Culture, Cambridge, MA, The MIT Press, 1991, p164.

³⁹⁷Ibid, p163.

³⁹⁸Ibid, 165. This refers to what Zizek elsewhere describes as "the Lacanian distinction between the subject of the enunciated and the subject of the enunciation," where the former is always general and the latter is always singular but where the distinction itself

is effaced at the actual moment when enunciation takes place. See "The King is a Thing," p34.

³⁹⁹Ibid, p166.

⁴⁰⁰Gassan Hage, "Locating Multiculturalism's Other: A Critique of Practical Toleration," New Formations, 24, Winter 1994, p21.

⁴⁰¹Ibid, p19.

⁴⁰²Ibid, p21.

⁴⁰³Ibid, p29.

⁴⁰⁴As Derrida notes, this phrase has its recent origins in the immigration policy articulated by the former French President Francois Mitterrand. See "The Deconstruction of Actuality," p34.

⁴⁰⁵"Locating Multiculturalism's Other: A Critique of Practical Toleration," p34.

⁴⁰⁶Quoted by Hage, p21.

⁴⁰⁷Angela P. Harris, "Race and Essentialism in Feminist Legal Theory," Stanford Law Review, 42, February 1990, pp581-616, p603.

⁴⁰⁸Ibid, p608.

⁴⁰⁹Ibid, p611.

⁴¹⁰As Rawls puts it, "Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like....[In this respect,] The principles of justice are chosen behind a veil of ignorance." John Rawls, A Theory of Justice, Oxford, Clarendon Press, 1972, p12.

⁴¹¹Ronald Dworkin, Taking Rights Seriously, Cambridge, MA, 1977, p182, quoted in Chantal Mouffe, "Pluralism and Modern Democracy: Around Carl Schmidt," New Formations, 14, Summer, 1991, p9.

⁴¹²John Rawls, A Theory of Justice. The point here is that Rawls believes that imagining ourselves in the position of the worst off member of society can allow for justice as fairness because it navigates around the problem faced by communitarian theorists of identifying a substantive content for the Good. Instead, Rawls argues this imaginative act overcomes this problem because it represents a procedure which, because it is based on a

purely formal rather than substantive notion of equality, is bound to be fair in the outcomes it yields. In other words, as long as we follow the procedure of imagining what it would be like to be the worst off in society in deciding the original distribution of social resources, both intellectual and material, the outcomes which result from this will be fair and the society which is thereby constituted will be just. (For Rawls account of procedural justice see p85-86.) As he suggests, "[A]s long as we can identify the least advantaged representative man, only original judgments of well-being are required from then on. We know from what position the social system is to be judged." (p90) However, as I am about to try to demonstrate, it is both the difficulty of imagining a subject who is simply the worst off member of society, and who is in this sense just a victim, and the impossibility of thereby identifying an original position without an act of self-oppression, which Rawls fails to consider here. As I shall try to argue, this arises because Rawls formulates justice in terms of equality. That is to say, it is because justice is understood as equality, and equality requires representing oneself as just the victim, that the law formulated in the original position becomes incorporated into the violence which accompanies the reduction of each individual to the subject who is just one kind of being. It is in this context that I would suggest we might read the following statement by Rawls: "This impartial and consistent administration of laws and institutions, whatever their substantive principles, we may call formal justice. If we think of justice as always expressing a kind of equality, then formal justice requires that in their administration laws and institutions should apply equally (that is, in the same way) to those belonging to the classes defined by them. As Sidgwick emphasised, this sort of equality is implied in the very notion of law or institution, once it is thought of as a scheme of general rules. Formal justice is adherence to principle, or as some have said, obedience to system." (p58)

⁴¹³"Race and Essentialism in Feminist Legal Theory," p613.

⁴¹⁴Gayatri Chakravorty Spivak, "Can the Subaltern Speak?" in Marxism and the Interpretation of Culture, Cary Nelson ed., Chicago, University of Chicago Press, 1988. As she points out in this essay, there is an irreducible connection between representation as "speaking for" someone politically, and the representation which is required by metaphysics in order to have an "object" to speak for. (p275) And it is this "epistemic violence" which takes place at the moment of speaking for which leads her to conclude finally that "The subaltern cannot speak. There is no virtue in global laundry lists with "woman" as a pious item. Representation has not withered away." (p309)

⁴¹⁵Vron Ware, Beyond the Pale. White Women, Racism and History, London, Verso, 1992, p237.

⁴¹⁶See "Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception."

⁴¹⁷Susan Ruddick, "Constructing Difference in Public Spaces: Race, Class, and Gender as Interlocking Systems," Urban Geography, 17:2, 1996, pp132-151, p138. The recognition of this "intersectionality" has been growing in both legal theory and judicial practice. For an example of the former, in addition to the work of Angela Harris see Kimberle Williams Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Colour," Stanford Law Review, 44, 1991, which highlights how black women have a unique experience of violence which cannot be reduced to either race or gender. More recently, Sharon Elizabeth Rush has argued that "From a Blacklesbian's perspective, an essentialist analysis that focuses on only racism ignores the oppressive forces in her life of sexism and homophobia. Nor is it sufficient to explore each of these aspects of her identity in isolation from the others, as if the exercise were mathematical with racism, sexism, and homophobia, each accounting for a certain amount of oppression. Only if the relationship among racism, sexism, and homophobia is studied will we have a complete understanding of how to reconstruct society so that a Blacklesbian can live free from the institutional oppression that currently exists." (Sharon Elizabeth Rush, "Equal Protection Analogies - Identity and "Passing": Race and Sexual Orientation," Harvard Blackletter Law Journal, 13, 1997, p69.) For an example of the latter, the recognition of intersectionality in judicial decision making, see Mary Eaton's discussion of *DeGraffenreid v. General Motors* (1976), a landmark case in which the Court recognised black women as a separate category of subject under the law. That is to say, it recognised that black women are made invisible by the racial context in which issues of gender discrimination are commonly represented and by the gender context in which racial issues are represented. In other words, it removed black women from their erasure in the field of gender and racial discrimination by the interpretive privilege given by previous courts to the experience of white women and black men. (See Mary Eaton, "Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity," in Legal Inversions: Lesbians, Gay Men, and the Politics of Law, Didi Herman and Carl Stychin eds., Philadelphia, Temple University Press, 1995, pp46-73, p52-54.) I develop the implications of intersectionality for liberal theory in the paragraphs which follow. Also, as I argue in the case study, the recognition of some intersectional identities can be read as a strategy of tokenism undertaken by a dominant culture in order to police more fundamental boundaries of inclusion and exclusion.

⁴¹⁸Zillah Eisenstein, Hatreds: Racialised and Sexualised Conflicts in the 21st Century, New York, Routledge, 1996, p81.

⁴¹⁹For a discussion of this issue in the context of black racial identity see, Devon W. Carbado, "The Construction of O. J. Simpson as a Racial Victim," Harvard Civil Rights-Civil Liberties Law Review, 32, 1997, pp49-103. As he notes here, "[A]ntiracist efforts that focus primarily on Black male racial discrimination as a means of eradicating Black racial subordination....result from the perception that Black women's experiences with racism are a subset of Black men's experiences with racism, different in particular ways but essentially the same." p52. Or as he puts it more critically, "The Endangered Black Man narrative speaks to....a larger myth of racial authenticity that has been so

successfully cultivated in ghetto-centric culture, a myth that renders invisible the specific contours of living in female, working-class, gay and lesbian black bodies." p56.

⁴²⁰Zillah Eisenstein, Hatreds: Racialised and Sexualised Conflicts in the 21st Century, p81.

⁴²¹Peter Feng, "Being Chinese American, Becoming Asian American: Chan is Missing," Cinema Journal, 35:4, Summer 1996, pp88-118, p92.

⁴²²Ibid, p93.

⁴²³Ibid, p95.

⁴²⁴On the model minority thesis see, Ruth Y, Hsu, "Will the Model Minority Please Identify Itself?" American Ethnic Identity and its Discontents," Diaspora, 5:1, 1996.

⁴²⁵See David Palumbo-Liu, "Los Angeles, Asians, and Perverse Ventriloquisms: On the Functions of Asian Americans in the Recent American Imaginary," Public Culture, 6, 1994, pp365-381. The photo which Palumbo-Liu gives a reading of is reproduced in the list of figures at the end of chapter eleven as Figure 3.

⁴²⁶Lisa Lowe, "Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences," Diaspora, Spring 1991, pp24-44, p32.

⁴²⁷Ibid, p35.

⁴²⁸Charles Taylor, "The Politics of Recognition," in Multiculturalism: Examining the Politics of Recognition, Amy Gutmann ed., Princeton, Princeton University Press, 1994, p32.

⁴²⁹Ibid, p58-59.

⁴³⁰Ibid, p38.

⁴³¹Ibid, p61.

⁴³²Jacques Derrida, "Living On: Borderlines," in Deconstruction and Criticism, Harold Bloom ed., New York, Seabury Press, p84.

⁴³³Ibid, p108.

⁴³⁴Ibid, p109.

⁴³⁵As he says, "Play is always play of absence and presence, but if it is to be thought radically, play must be conceived before the alternative of presence and absence. Being must be conceived on the basis of the possibility of play and not the other way around." See "Structure, Sign, and Play in the Discourse of the Human Sciences," in Writing and Difference, p292.

⁴³⁶"Living On: Borderlines," p115.

⁴³⁷Homi Bhabha, "The Postcolonial Critic," Arena, 96, 1991, pp47-63, p50. The other quotes offered in this paragraph are also from this page.

⁴³⁸Amelie Oskenberg Rorty, "The Hidden Politics of Cultural Identification," Political Theory, 22:1, February 1994, pp152-166, p152.

⁴³⁹Gayatri Chakravorty Spivak, "Questions of Multiculturalism," in Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies and Dialogues, p60.

⁴⁴⁰Ibid.

⁴⁴¹Ibid, p63. As she adds, although it is a problem "On the other hand, we cannot put it under the carpet with demands for authentic voices; we have to remind ourselves that, as we do this, we might be compounding the problem even as we are trying to solve it. And there has to be a persistent critique of what one is up to, so that one doesn't get all bogged down in this homogenisation; constructing the Other simply as an object of knowledge, leaving out the real Others because of the ones who are getting access into public places due to these waves of benevolence and so on. I think as long as one remains aware that it is a very problematic field, there is some hope." (p63) As we shall see, this point is crucial to understanding the issues which have emerged surrounding the demand by multiracial Americans for their own category on the 2000 census.

⁴⁴²Iris Marion Young, "The Ideal of Community and the Politics of Difference," in Feminism/Postmodernism, Linda Nicholson ed., New York, Routledge, 1990, pp300-324, p300.

⁴⁴³Ibid, p304.

⁴⁴⁴Ibid, p307.

⁴⁴⁵Ibid, p302.

⁴⁴⁶Ibid, p312.

⁴⁴⁷Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," Ethics, 99, January 1989, pp250-274, p260.

⁴⁴⁸Ibid, p263.

⁴⁴⁹Ibid, p264.

⁴⁵⁰Ibid, p272-273.

⁴⁵¹Ibid. p274.

⁴⁵²Iris Marion Young, Justice and the Politics of Difference, Princeton, New Jersey, Princeton University Press, 1990, p236.

⁴⁵³Ibid.

⁴⁵⁴Ibid.

⁴⁵⁵Bodies that Matter: On the Discursive Limits of "Sex", p112.

⁴⁵⁶Ibid, p114.

⁴⁵⁷Wendy Brown, "Wounded Attachments," p391.

⁴⁵⁸Ibid, p393.

⁴⁵⁹Ibid.

⁴⁶⁰I referred to this formulation briefly in the introduction. See The Terms of Political Discourse.

⁴⁶¹See "More on Power/Knowledge," in Gayatri Chakravorty Spivak, Outside in the Teaching Machine, p44, where Spivak in fact suggests that this term may not be applicable to the liberal theory of the subject, though she does not go on to suggest why this might be the case. Judith Butler also refers to this term when proposing a similar formulation in Bodies that Matter: On the Discursive Limits of "Sex", p122. The following sentence draws from her formulation.

⁴⁶²Gayatri Spivak, "The New Historicism: Political Commitment and the Postmodern Critic," in Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies, and Dialogues, p158.

⁴⁶³Michael Omi and Dana Y. Takagi, "Situating Asian Americans in the Political Discourse on Affirmative Action," Representations, 55, Summer 1996, p161. The writer and journalist Richard Rodriguez has also made the same observation, suggesting that "In fact, the most interesting questions about race right now have to do with racial meetings

where white is not even there. Guatemalans working for Koreans in Los Angeles, Filipinos and Samoans feuding in a San Francisco high school." "Beyond the Black and White Chessboard," Pacific News Service, October 26, 1995. (www.pacificnews.org)

⁴⁶⁴Michael Omi and Dana Y. Takagi, "Situating Asian Americans in the Political Discourse on Affirmative Action," p161.

⁴⁶⁵Ibid.

⁴⁶⁶Ibid, p156.

⁴⁶⁷See Henry Louis Gates essay "White Like Me (Anatole Broyard wanted to be a writer, not a black writer. So he chose to live a lie rather than be trapped by the truth)," in The New Yorker, June 17, 1996, and the subsequent discussion of this on the Interracial Voice website, www.webcom.com/intvoice

⁴⁶⁸Project RACE wants to define multiracial identity by reference to a person or child's immediate parents rather than their broader racial ancestry. As I note later in this chapter, this is seen by its critics as a tactic of white women in interracial marriages who don't want their children to be defined as black.

⁴⁶⁹"Black America and Tiger's Dilemma," Ebony, July 1997, p29, 34. In the same article, Jesse Jackson argues that "The dilemma for Woods is that his decision was perceived quite differently by Blacks and Whites. While he may see the "Cablinasian" dimension, Fuzzy Zoeller sees him quite differently. And so the politics is that he runs the risk of making Black people feel that he is disassociating himself from Black people and that he is uncomfortable with Black people." (p30, 34)

⁴⁷⁰The Association of Multiethnic Americans (AMEA) letter to Congressman Tom Petri, June 18, 1997. (See www.webcom.com/intvoice)

⁴⁷¹Byrd made this comment on the Jim Lehrer Newshour. See "Multiracial Census Category," July 16, 1997, at www.webcom.com/intvoice. It will also be available at www.pbs.org

⁴⁷²"Boxed In: I'm black and white. Can't the census reflect that?" Lisa Funderburg, The New York Times, July 10, 1996.

⁴⁷³"Multiracialism: The Melding of America," Jack E. White, Time, May 5, 1997, p28.

⁴⁷⁴Emerge, January 1996. Reproduced by Interracial Voice at www.webcom.com/intvoice in March-April 1996. (Just to repeat the point made earlier, readers need be aware that I cannot guarantee that this or any other references sourced through the internet have not been deleted in the on-going process of updating websites.

This is why, where possible, I have cited the original hardcopy source rather than the website which reproduces it. However, as I also noted earlier it is often the case, as it is here with *Interracial Voice*, that either archive issues are kept or search facilities are available.)

⁴⁷⁵"Discriminating Liberals," Clint Bolick, New York Times, May 6, 1996.

⁴⁷⁶Quoted from "This Just In!" in "Interracial Voice Update," June 20, 1996, www.webcom.com/intvoice.

⁴⁷⁷On this detail see both "Tensions Mount, OMB nears decision on Multiracial Category for Census," Scott Shepard, July 7, 1997, Cox News Service; and "Panel Balks at Multiracial Census Category," Stephen A. Holmes, New York Times News Service, July 8, 1997.

⁴⁷⁸"More than Identity Rides on a New Racial Category," Linda Mathews, The New York Times, July 6, 1996, p7 L.

⁴⁷⁹*Ibid.*

⁴⁸⁰For an example of this criticism see "A Vested Interest in Maintaining Jim Crowism," Charles Michael Byrd (Editor of Interracial Voice), From the Editor, November-December 1996, www.webcom.com/intvoice. Readers may like to note that Susan Graham created Project RACE (Reclassify All Children Equally) party in an attempt, subsequently successful, to have the categories of racial identity used on state forms in Georgia altered to include a category for mixed-race. As she has said, this was prompted by the fact that the census classified her son as white by virtue of his mother's race, while his kindergarten teacher decided that he was black because his father dropped him at school, while yet again at home both parents thought of their son as biracial. See "More than Identity Rides on New Racial Category," p7.

⁴⁸¹Julie C. Lythcott-Haims, "Where Do Mixed Babies Belong? Racial Classification in America and its Implications for Transracial Adoption," Harvard Civil Rights-Civil Liberties Review, 29, 1994, pp530-558.

⁴⁸²*Ibid*, p552.

⁴⁸³*Ibid*, p554.

⁴⁸⁴*Ibid*, p557.

⁴⁸⁵This accusation was made by Alicia Banks, a radio talk-show host in Oakland, California, and was quoted in "Census Change Stirs Mixed-Race Debate," Orlando Brand-Williams, Detroit Daily News, January 5, 1998.

⁴⁸⁶Jon Michael Spencer, The New Coloured People: The Mixed-Race Movement in America, New York, New York University Press, p65-66.

⁴⁸⁷"A Vested Interest in Maintaining Jim Crowism," Charles Michael Byrd, Editor of Interracial Voice, From the Editor, November-December 1996, www.webcom.com/intvoice.

⁴⁸⁸Exchanges such as these are cited from the letters and commentary received at the Interracial Voice website, www.webcom.com/intvoice.

⁴⁸⁹"At NAACP, Talk of a Shift on Integration: Separate but Equal wins New Support," Stephen A. Holmes, The New York Times, June 23, 1997.

⁴⁹⁰Ibid.

⁴⁹¹This is an excerpt from Charles Michael Byrd's address to the first Multiracial Solidarity March, Washington, DC, July 20, 1996. (See www.webcom.com/intvoice)

⁴⁹²Judith Butler, "Sovereign Performatives in the Contemporary Scene of Utterance," Critical Inquiry, 23, Winter 1997, pp350-377, p355.

⁴⁹³Kenneth L. Karst, "Myths of Identity: Individual and Group Portraits of Race and Sexual Orientation," UCLA Law Review, 43, 1995, p322.

⁴⁹⁴Judith Butler, "Sovereign Performatives in the Contemporary Scene of Utterance," p359.

⁴⁹⁵Ibid, p356.

⁴⁹⁶The phrase is Martha Minow's. See "Surviving Victim Talk," UCLA Law Review, 40, 1993, p1431.

⁴⁹⁷Judith Butler, "Sovereign Performatives in the Contemporary Scene of Utterance," p363.

⁴⁹⁸Ibid, p362. The actual sentence used by Butler reads: "In speaking, she [Anita Hill] displays her agency; in speaking of sexuality she displays her sexual agency; hence, any claim made against the sexualisation of discourse from that position of the active sexualisation of discourse is rhetorically refuted by the act of speech itself or, rather by the actlike character of speech and the fictive agency presumed at work in the act of speaking."

⁴⁹⁹Devon W. Carbado, "The Construction of O.J. Simpson as a Racial Victim," p79.

⁵⁰⁰Ibid, p63.

⁵⁰¹Ibid, p83.

⁵⁰²Carrie G. Costello, "Legitimate Bonds and Unnatural Unions: Race, Sexual Orientation, and Control of the American Family," Harvard Women's Law Journal, 15, 1992, pp79-171, p81.

⁵⁰³"The New Face of America," Time, Fall 1993. (See Figure 1. All Figures are presented at the end of this chapter.)

⁵⁰⁴For example, on page 16 of the issue there is an article on illegal immigration to the US from Mexico. In the centre of the page there is a picture of a highway sign from Southern California which has the word "CAUTION" inscribed across it and a family of three running below it. Below the photo the magazine's caption "cautions" readers, "Most undocumented aliens enter the country through Mexico." In other words, although the highway sign is intended to prevent road traffic accidents the rhetorical force of the magazine's caption reconfigures its meaning to alter the reader's interpretation of the reason to be cautious.

⁵⁰⁵For example, although the first page of the issue informs readers that the 1990's has seen the largest rise in immigration since 1901-10, it focuses on the fact that this will mean that by 2010 Hispanics will outnumber blacks as the largest minority in the US rather than on the equally significant, but more problematic, fact that by 2050 whites will no longer be in the majority. Thus, Time's readers have the best of both worlds here; in the future life will, literally, no longer be as black as it is now, yet there is every reason to believe that it will still be as white. We should also note that in addition to being almost white the woman on the front cover also has straight hair and a European nose, rather than the curly hair and flat nose of an African American.

⁵⁰⁶In the article on illegal immigration mentioned above, we find that although "For illegal aliens life in a new land is mostly one of poverty, anxiety and loneliness" (a reassuring image to readers concerned that immigration levels are rising and will keep doing so), "With a relatively static force of only 5,600 agents, the US has effectively lost control of its territorial integrity." Thus anxiety is created but not panic and hysteria, a reaction which would itself destroy the ability of the magazine to deploy the multiracial image as a reassuring antidote.

⁵⁰⁷"Betty, meet Ashley, a 90's woman," Steven V. Roberts, US News and World Report, April 1, 1996, p10-11. (See Figure 2.)

⁵⁰⁸Halley's view is supported by Sharon Elizabeth Rush when she explores the way in which heterosexuality, like whiteness, is held as a right of property in American society

in the sense that it gives those holding it a valuable asset which they can use to purchase privileges inaccessible to those not holding it. As she puts it, "Heterosexuality is the celebrated norm in our society. Socially, the heterosexual couple is glorified. Long before a child is even concerned with marriage, he or she is socially indoctrinated with the heterosexual norm and expectation. The image and idea of heterosexuality are visible almost anywhere - on billboards, television, children's books, the best seller list, movies, and even the PTA....In contrast, lesbians and gay men generally are social outcasts and there are almost daily reminders of their marginal status. A positive image of homosexuality is rarely, if ever, to be found, no matter where one looks - billboards, television, children's books, best seller lists, movies, theatre, or the PTA. Public affirmation of lesbians and gay men is almost non-existent." Sharon Elizabeth Rush, "Equal Protection Analogies - Identity and "Passing": Race and Sexual Orientation," p90-91.

⁵⁰⁹Clinton's first and apparently only public response to the question of recognising multiracial identity came during the question session which followed his address to "The American Society of Newspaper Editors," April 7, 1995 (Dallas, Texas), where he noted "That's the first time I ever heard of it, but it makes sense...we are clearly going to have more and more multiracial, multiethnic children and families in this country...I think that it ought to be done. I can't see any reason not to do it." (See www.webcom.com/intvoice)

⁵¹⁰See "Census Recommendations meet Opposition from "Multiracial" Category Proponents," Scott Shepard, July 25, 1997, Cox News Service.

⁵¹¹As Charles Michael Byrd has noted, "The radical right must not succeed in abolishing these [affirmative action] programs, but the black leadership must become more sophisticated in the way it handles the race issue: many "mulattoes" are more than willing to forfeit participation in any government program in exchange for the basic right to self-identify." "About Race: The Census One-Drop Rule," September-October, 1995, www.webcom.com/intvoice. Carlos Fernandez implied the same thing in his testimony on behalf of the AMEA at the first Congressional hearing into the idea of a new census category for multiracial people in 1993. As he suggested there, "We believe that every person, especially every child, who is multiracial/interracial has the same rights as any other person to assert an identity that embraces the fullness and integrity of their actual ancestry." (AMEA testimony before the "Subcommittee on Census, Statistics, and Postal Personnel of the US House of Representatives," Washington, DC, June 30, 1993, www.webcom.com/intvoice.)

⁵¹²Gayatri Chakravorty Spivak, "Explanation and Culture: Marginalia," In Other Worlds: Essays in Cultural Politics, pp103-118, p107.

⁵¹³Ibid, p109.

⁵¹⁴Ibid, p114.

⁵¹⁵David Palumbo-Liu, "Los Angeles, Asians, and Perverse Ventriloquisms: On the Functions of Asian America in the Recent American Imaginary," especially p370-377. (See also Figure 3.) As he suggests, the caption "This is not America" creates a moment of ambivalence in the reader's interpretation of the photo so that what is obviously taking place within America is at the same time distanced from "America" as a set of cultural and political identifications. This allows "white America" to remain outside the terms of what is taking place in America, while nevertheless organising our reading of what is actually taking place in the photo. In other words, the suggestion that "this is not America" invites the reader to look for those moments in the photo which can be identified as "America" and to draw certain identificatory boundaries accordingly. In this instance, what we therefore find is that the reader who is obviously now looking to identify with "America" makes an association with the Korean American who is defending his private property against the rioting blacks who are then identified with that which is not American. Of course, the process of hegemonic rearticulation performed by the photo-caption is deconstructed, that is, deconstructs within itself, because we find that the white America now represented on the body of the Korean American will itself deploy the same strategy of taking any means necessary that blacks since the era of Malcolm X have argued for.

⁵¹⁶See Figure 4, from "More than Identity Rides on a New Racial Category," Linda Mathews, The New York Times, July 6, 1996, p7 L.

⁵¹⁷See Figure 5, "Intermarried With Children," Jill Smolowe, Time, Fall 1993, p64-65.

⁵¹⁸See Figure 6, "Don't you dare list them as 'other': Multiracial Americans seek full recognition," Hannah Beech, US News and World Report, April 8, 1996, p56.

⁵¹⁹See Figure 7, "Multiracial Americans Ready To Claim Their Own Identity," Michel Marriott, The New York Times, July 20, 1996, p7.

⁵²⁰David Palumbo-Liu, "Los Angeles, Asians, and Perverse Ventriloquisms: On the Functions of Asian America in the Recent American Imaginary," p380. As an additional point, I would like to note that this approach is consistent with the critique of traditional approaches to methodology which I offered at the start of this chapter. That is to say, because it remains within the concerns of the ontic difference, thereby presupposing that Being is present in what is present-at-hand, the unreflective use of methodologies follows the traditional understanding of the relationship between text and image. In other words, because the possibility of Being is presupposed the picture is understood to merely illustrate an already existing text, just as we have seen that within the metaphysical tradition in general writing is understood simply to be the aid to a poor memory and therefore as merely a supplement to speech. In this context, the critical task is already limited to simply searching for the right image; that is to say, the context of questioning never exceeds the ontic difference. In this respect, methodologies are deployed to "sought

out" the differences between images in their relation to that meaning which is present within the text. At this point, then, the "correct" image merely confirms the theoretical speculation set out in the text. In contrast, Palumbo-Liu's approach here is one which recovers the question of Being as a question of the interpretive sites where the dominant ideologies of American identity are enframed. That is to say, what we have in his reading of the photograph of the LA riots is an account of how the not-there of white America's Being-there is thought and how it is deployed to give it the gift of Being. It is therefore because he is not limited to the issues raised within the ontic difference and so does not follow a methodology in the traditional sense that he is able to show that it is only through a certain Being-towards...that American identity can appear. Here the critical task is no longer a question of finding the "right" image, but rather of exploring the way in which the range of interpretive opportunities at work in the text provide the image with its possibility of coming into presence.

⁵²¹Nadine Taub, "Welfare "Reform": An Attack on Us All," quoted in Angela P. Harris, "The Unbearable Lightness of Identity," African-American Law and Policy Report, pp207-221, p213.

⁵²²Deborah R. Grayson, "Mediating Intimacy: Black Surrogate Mothers and the Law," Critical Inquiry, 24, Winter, 1998, pp525-46.

⁵²³Ibid, p538.

⁵²⁴Ibid, p536. (My emphasis.)

⁵²⁵Carrie G. Costello, "Legitimate Bonds and Unnatural Unions: Race, Sexual Orientation, and Control of the American Family," p84.

⁵²⁶Ibid, p85.

⁵²⁷Ibid, p137.

⁵²⁸Ibid, p139.

⁵²⁹Ibid, p142.

⁵³⁰Ibid, p150.

⁵³¹Ibid, p153-154.

⁵³²Ibid, p156.

⁵³³Jon Michael Spencer, The New Coloured People: The Mixed-Race Movement in America, p106.

⁵³⁴Though her gender is indicated, the sociologist is referred to simply as Professor Waters. In the statement to which I am referring she suggests that "My pet theory is that the definition of white is going to change, to become far more encompassing. That may be the only thing standing in the way of whites becoming a minority by the year 2040." See "More than Identity Rides on Drive for New Census Category on Race," Linda Mathews, The New York Times, July 6, 1996, pL7.

⁵³⁵Kate O'Hanlan, Letters to the Editor, San Francisco Chronicle, June 15, 1997, p8. (Readers can locate this letter by logging onto "www.sfgate.com" and then using the search facility. Unlike many other major US newspapers, I think that the The San Francisco Chronicle still allows free access via the internet.)

⁵³⁶Mayor Willie Brown, quoted in "Same Sex Marriage Draws Hot Debate," Rachel Gordon, San Francisco Examiner, August 3, 1997. (www.sfgate.com)

⁵³⁷"Aids Child With Two Lesbian Moms: How Couple Fought State For Adoption," Elaine Herscher, The San Francisco Chronicle, November 27, 1989, pA8.

⁵³⁸Carrie G, Costello, "Legitimate Bonds and Unnatural Unions: Race, Sexual Orientation, and Control of the American Family," p157.

⁵³⁹Carlos Fernandez, giving the AMEA's testimony before the "Subcommittee on Census, Statistics, and Postal Personnel of the US House of Representatives," Washington, DC, June 30, 1993, www.webcom.com/intvoice.

⁵⁴⁰Ibid.

⁵⁴¹Judith Butler, "Sovereign Performatives in the Contemporary Scene of Utterance," p366.

⁵⁴²Ibid, p367.

⁵⁴³This ruling came on December 3, 1996. (See Glaadlines, at www.glaad.com)

⁵⁴⁴See the analysis by Kim Kirkley, attorney with the Lambda Legal Defence and Education Fund, at www.ftm.org. As the Waco Tribune Herald also noted in its editorial, "The fact that 80% of Americans oppose gay marriages is not the point. The majority rules insofar as it does infringe upon the rights and freedoms granted to all Americans who must be afforded equal treatment under the law." Roland Nethaway, Editor, Waco Tribune Herald, December 11, 1996. (www.ftm.org) We should also be aware that the passage of The Defense of Marriage Act (DOMA) by Congress in September 1996 opened the possibility for individual states to avoid extending full faith and credit to the Hawaiian court's decision.

⁵⁴⁵Ibid.

⁵⁴⁶Deb Price, "Civil Rites: Arguments against Same-Sex Marriage mirror those that kept the races apart," Detroit News, reproduced at www.ftm.org. (The date of publication was not made available.)

⁵⁴⁷Eric Zorn, "Mixed-Race/Homosexual Marriage," Chicago Tribune, May 16, 1996, reproduced at www.ftm.org. In another example, this time from the Los Angeles Times, Kirby Tepper draws the following parallel: "By the time *Showboat* was written [in the late-1920's], the law [on inter-racial marriage] was changing, even though public opinion had not. Isn't it interesting that countless people flock to see *Showboat* and take it for granted that the bad guys are the ones who try to stop the marriage between the black woman and white man? Gay people deserve the same application of the law." December 6, 1996 (www.ftm.org)

⁵⁴⁸Hannah Arendt, "Reflections on Little Rock," Dissent, 6:1, 1959, p49.

⁵⁴⁹"Liberation," Andrew Sullivan, The New Republic, May 6, 1996, p6.

⁵⁵⁰Mary Eaton, "Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity," in Didi Herman and Carl Stychin, eds., Legal Inversions: Lesbians, Gay Men, and the Politics of Law, p62.

⁵⁵¹The two texts which I have in mind here are Kenneth L. Karst's "Myths of Identity: Individual and Group Portraits of Race and sexual Orientation," UCLA Law Review, 43, 1995, and Andrew Koppelman's "The Miscegenation Analogy: Sodomy Law as Sex Discrimination," The Yale Law Journal, 98, 1988.

⁵⁵²One writer who makes a better attempt to consider the question of analogical reasoning is Sharon Elizabeth Rush. In her article "Equal Protection Analogies - Identity and "Passing": Race and Sexual Orientation," Rush supports the idea of using analogical reasoning as a way of arguing for protection for gay men and lesbians. As she notes, "The perceived need of some people of colour to "pass" as White and some gay men and lesbians to "pass" as straight is indicative of the oppression they feel in living out their identities in all situations. The concept of "passing" is another illustration of similar ways in which race and sexual orientation discrimination are results of hegemonic power sources that subordinate people of colour and gay men and lesbians to the dominant cultures of Whiteness and heterosexuality, respectively. A comparative analysis of the passing concept in the different contexts supports drawing the analogy between race and sexual discrimination." (p85) In this respect, one argument which she makes in favour of analogical reasoning is that the "trace" of one group in another, the kind of "intersectionality" which we have been exploring, deconstructs the idea that all oppressions are unique. As she suggests, "[H]owever compelling a group's history of discrimination is, a reliance on that alone without any regard for the suffering of others

fails to account for the fact that members of one group can be members of other groups. For example, many Blacks also are lesbian, gay men, or bisexual. Recall that White feminist scholars initially failed to take race into account in their critique of patriarchy." (p101) The difficulty with Rush's position, however, is that her belief in the power of analogy leads her to maintain a view that the victim can finally get to speak in the sense that all outside groups "share a common pain of exclusion." (p105) Thus, analogical reasoning for Rush has the ability "to bridge gaps in understanding among different groups." (p105) The problem here is that Rush does not read the simultaneous play of sameness *and* difference which a Derridean reading finds in the trace. Instead, by reading the trace as simply a connecting metaphor which justifies analogical reasoning, Rush takes the position that society itself can be fully inclusive. Rather like those political theorists which we have considered such as Arendt and Rawls, she wants to retain the possibility that there is an outside to violence, that is, an end to exclusion. As a result, she concludes that "Unless all subordinated people are included in dismantling oppression, then any reconstructed society will have "outsiders" built into it.... Thus, efforts to come together in our quests for equality increase the likelihood that we can transcend the limitations of hegemony, and reconstruct a more equal and just society for all people." (p106) However, if we follow the Foucaultian/Derridean trajectory which we have established here then the possibility of resisting hegemony actually depends on recognising that there is no outside to hegemony; that there is no neutral space where hegemony can be transcended. For to argue otherwise is to provide hegemony with the very philosophical resources which allow counter-hegemonic challenges to be resisted.

⁵⁵³Francisco Valdes, "Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society," California Law Review, 83:1, January 1995, p122.

⁵⁵⁴Ibid, p123.

⁵⁵⁵Ibid, p26.

⁵⁵⁶Mary Eaton, "Homosexual Unmodified: Speculations on Law's Discourse, Race, and the Construction of Sexual Identity," in Didi Herman and Carl Stychin, eds., Legal Inversions: Lesbians, Gay Men, and the Politics of Law, p53.

⁵⁵⁷Ibid, p54.

⁵⁵⁸Ibid, p54-56.

⁵⁵⁹Ibid, p51.

⁵⁶⁰Ibid.

⁵⁶¹Ibid, p52.

⁵⁶²James T. Sears, Growing up Gay in the South: Race, Gender, and Journeys of the Spirit, New York, Harrington Park Press, 1991. Sears text is discussed by Valdes in "Queers, Sissies, Dykes, and Tomboys: Deconstructing "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society" (p107-109), and it is from this discussion that I am partly drawing here.

⁵⁶³See my brief discussion of Butler's concept of "gender melancholia" at the end of chapter four, and more generally her text The Psychic Life of Power: Theories of Subjection which I cite there.

⁵⁶⁴Carole-Anne Tyler, "Passing: Narcissism, Identity, and Difference," differences: A Journal of Feminist Cultural Studies, Vol.6, Nos.2+3, 1994, p212.

⁵⁶⁵Ibid, p213.

⁵⁶⁶Jana Wright, "I'm Coming Out," Letters to the Editor, Interracial Voice, www.webcom.com/intvoice

⁵⁶⁷Connolly covers much of this ground in the introduction and then chapters one and five of Identity\Difference: Democratic Negotiations of Political Paradox, though the focus on the subject identity of the victim is one which my reading has brought to his text.

⁵⁶⁸Milic Capek, The Philosophical Impact of Contemporary Physics, Princeton, New Jersey, Van Nostrand, 1961, p7.

⁵⁶⁹Ibid, p29.

⁵⁷⁰Ibid, p36.

⁵⁷¹Ibid, p36. For other accounts of Newton's cosmology, see Capek's introduction to The Concepts of Space and Time: Their Structure and the Development, Milic Capek ed., Boston, D. Reidel Publishing Company, 1976; and also Alexander Koyre, From the Closed World to the Infinite Universe, Baltimore, Johns Hopkins Press, 1957, pp160-195.

⁵⁷²Ibid, p57. I would like to point out that the connection with Kant which I am about to make is my own and does not come from Capek or Koyre.

⁵⁷³Quoted in Martha Minow, "Surviving Victim Talk," p1439. In the case of black identity, Angela Harris has suggested that it is necessary to resist what she calls "the easy innocence of supposing oneself to be an essential black self with a legacy of oppression by the guilty white Other." Instead, because the self is always the intersection of contradictory imperatives for identification, and so "contains the oppressor as well as the

oppressed," Harris argues that all individuals must "acknowledge guilt as well as innocence." "Race and Essentialism in Feminist Legal Theory," p609.

⁵⁷⁴Judith Butler, "Implicit Censorship and Discursive Agency," Chapter 4 in Excitable Speech: A Politics of the Performative, New York, Routledge, 1996, p133.

⁵⁷⁵As Butler notes, "By "productive" I do not mean positive or beneficial, but rather, a view of power as formative and constitutive, that is, not conceived exclusively as an external exertion of control or as the deprivation of liberties. According to this view, censorship is not merely restrictive and privative, that is, active in depriving subjects of the freedom to express themselves in certain ways, but also as formative of subjects and the legitimate boundaries of speech. This kind of productive or formative power...operates to make certain kinds of citizens possible and others impossible....depending on whether the speech of such a candidate for subjecthood obeys certain norms governing what is speakable and what is not." Ibid, p132-133.

⁵⁷⁶On this see William B. Rubenstein, "Since When Is the Fourteenth Amendment Our Route to Equality? Some Reflections on the Construction of the "Hate Speech" Debate from a Lesbian/Gay Perspective," in Henry Louis Gates Jr. ed., Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties, New York, New York University Press, 1994, where Rubenstein argues that in fact lesbians and gays have achieved greater progress in equality from claims made under the First rather than the Fourteenth Amendment. As he says, "There have been only a scattered few federal court decisions extending heightened judicial scrutiny to classifications based on sexual orientation, and most of these have been overturned or vacated. There are no definitive, final circuit court opinions applying heightened scrutiny to discrimination against lesbians and gay men, and, indeed, at least six federal circuit courts. What's worse, I know of only one case in the history of the United States in which a lesbian or gay man has won a final decision from a federal court based on the Fourteenth Amendment." (p288) And in a phrase which gestures strongly towards Butler's notion of censorship, Rubenstein adds that "Because taking on lesbian/gay identity involves coming out, society can oppress gay people most directly simply by ensuring that such expressions are silenced." (p283)

⁵⁷⁷Butler, "Implicit Censorship and Discursive Agency," in Excitable Speech: A Politics of the Performative, 1996, p136.

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