Philosophy: Faculty Publications and Other Works

Faculty Publications and Other Works by Department

2005

Foucault and Habermas

David Ingram
Loyola University Chicago, dingram@luc.edu

Author Manuscript

This is a pre-publication author manuscript of the final, published article.

Recommended Citation

Ingram, David. "Foucault and Habermas." In The Cambridge Companion to Foucault (2nd revised edition), ed. G. Gutting (Cambridge: Cambridge University Press, 2005), 240-83.

Foucault and Habermas [The Cambridge Campanion to Foucault, 2nd Edition]
- David Ingram 10/25/04 Filename: Foucaultnew.wpd

I confess a deep reluctance to commenting on Foucault in light of his astute observation that commentaries only "say what has already been said and repeat tirelessly what was nevertheless never said."[i] How much truer this is when the commentator proposes to repeat an earlier commentary, as I propose to do here.[ii]

The vanity of my undertaking will hopefully be offset by the modesty of my aim: to revisit the debate between Foucault and Habermas in order to dispel the notion that they are engaged in incompatible rather than complementary acts of social critique. Accepted wisdom has it that Foucault is an anti-humanist who rejects the emancipatory ideals of the Enlightenment. Habermas, by contrast, is portrayed as the arch defender of those ideals. Again, "common knowledge" holds that Foucault is a historical relativist with strong "anarchist" leanings, while Habermas is a "transcendental" philosopher in the Kantian vein engaged in rationally deducing universal and necessary norms.

In truth, both are humanists - despite their divergent takes on the philosophical coherence of humanism. Both readily accede to the value of such things as rights and democratic institutions in shaping and protecting modern critical aptitudes, and both accept the ambivalent nature of rights and democratic institutions in simultaneously constraining and enabling individual acts of non-conformism and resistance. Where they principally differ is on their choice of priorities: Foucault can be understood as a modern-day *virtue ethicist* fighting to liberate the capacity of individual self-choice and personal self-formation from oppressive conformism while Habermas can be seen as a *political theorist* concerned with justifying and promoting a more just conception of democracy based upon an ethics of discourse.

To be sure, Foucault and Habermas seem to differ quite strongly on whether philosophical humanism is necessary for motivating critical practice in some deep "theoretical" sense, and they also seem to disagree on whether philosophical humanism is even coherent. But here too I shall argue that the difference between them is largely one of perception. Foucault and Habermas agree that humanism forces us to think of human agency in terms of dualistic categories of reflection; they just assess this situation differently. Whereas Foucault sees humanism as an ambivalent force of self-empowerment that excludes as much as it includes and constrains as much as it emancipates, Habermas sees it as an instantiation of dialogical openness that is unconditionally liberating.

Before proceeding further it is advisable to acknowledge up front that any discussion of Foucault and Habermas must confront the messy fact that their own thinking about critical theory underwent fairly drastic changes over a period of twenty-odd years. Here I am again reminded of Foucault's own admonition to those who would aspire to be his critics: "Do not ask who I am and do not ask me to remain the same. Leave it to our bureaucrats and police to see that our papers are in order" (*AK*, 17). While I'm afraid I cannot grant him this last request, I do so with the knowledge that none of us who thinks himself or herself a critical theorist - including Foucault - has ever succeeded in resisting the urge to police the limits of what can and cannot be said. Having conceded that, I will limit my policing by focusing mainly on his and Habermas's most mature writings, in which both reclaim the legacy of Kant and the Enlightenment against each other.[iii]

After briefly discussing Foucault's initial reservations about Enlightenment humanism, I will turn to Habermas's defense of the same. Following this initial exchange, I propose to examine their respective "theories" of social and - above all - critical practice. The standard view held by most commentators is that Habermas situates critical practice in consensus-oriented communicative action unconstrained by power, while Foucault situates critical practice in strategic action that is importantly conditioned by power. I argue that this view is grossly misleading. What Habermas means by "communicative action" must incorporate something like "strategic action" in Foucault's sense of the term; conversely, what Foucault means by "strategic action" must incorporate something like what Habermas means by "communicative interaction." I conclude my commentary by arguing that the two sorts of critical theory/practice put forward by Habermas and Foucault are complementary rather than antagonistic.

The Critique of Humanism in Marx and Nietzsche

The proper place to begin our discussion is with humanism, since it is around this elusive concept that so much of the debate between Habermas and Foucault seems to revolve. To that end, a brief reprise of the quintessentially ambivalent reception of humanism among their philosophical progenitors - especially Marx and Nietzsche – seems appropriate. Humanism - or the notion that there exists a universal moral core common to humanity - is the very substance and soul of modern enlightenment.[iv] Against all parochial narrow-mindedness and tyranny, it celebrates the inherent freedom and equality of all persons, and charts an unwavering course toward

complete and total emancipation. Since Rousseau, critical theorists have continued to sing its praises. But not without reservation. Although Rousseau extolled the higher freedom that comes with obeying the universal law of reason, he rued the calculated egoism unleashed by the rational dissolution of social bonds. Hegel (like Burke) later pilloried Rousseau's own defense of sentimental individualism in his withering critique of the "Rights of Man and of Citizen," whose abstraction from social convention he thought paved the way for the terrorist excesses of the French Revolution. Then there is Marx. Even while opposing Feuerbachian humanism to capitalism, the young Marx rejected human rights (political emancipation) as symptomatic of this very same dehumanization. True emancipation, he reasoned, will only come with the revolutionary establishment of communism, which abolishes private property. This having been accomplished, conflicts between egoistic individuals will gradually disappear - along with rights that are needed to protect them from each other.

Within barely a few years of penning his critique of human rights, Marx would come to rephrase the emancipatory aims of humanism in a way that would cast doubt on humanism itself. Leaving aside his premature speculations about the world-historical mission of the proletariat as a truly universal class encompassing the oppression of all other classes, what remains in his later thought is the utter rejection of idealism in any form and the complete embrace of historical relativism. For the mature Marx, *humanity* is an unreal abstraction that masks real conflicts between economic classes that have essentially antagonistic interests and share nothing of importance in common. That is why Marx eschews utopian socialist appeals to human decency in galvanizing revolutionary action. Sounding more and more like Bentham, he never ceases to remind us how useless such vapid notions as human rights are in adjudicating conflicts over property and other matters of distributive justice. And buying into moral abstractions can be risky for other reasons as well, not the least being that they can be interpreted in ways that are entirely compatible with the status quo. As Marx pointed out, because human rights are by nature abstract, the justice and equality they serve to protect is likewise abstract, permitting extreme inequalities in their actual exercise.

Admittedly, my all-to-brief summary of Marx's anti-humanism fails to do justice to his irrepressible faith in the inevitability of progress, understood precisely in terms of universal human fulfillment. It is therefore hardly surprising that it is Nietzsche, not Marx, who is today regarded as the real founder of modern anti-humanism. Sounding like an apostate of Feuerbach and the young Marx, Nietzsche sees in humanism nothing more than a secular version of theism, with all its freedom- and life-denying implications. Even that great paean to freedom and life -

human rights - is for him nothing but a sly invention on the part of the weak to constrain the vital, creative powers of the strong. As Nietzsche so eloquently put it in the *Genealogy of Morals:* "What an enormous price man had to pay for reason, seriousness, and control over his emotions - those grand human prerogatives and cultural showpieces! How much blood and horror lies behind all good things!"[v]

Thanks to Freud and the Frankfurt School, subsequent generations of critical theorists would make Nietzsche's diagnosis of the modern soul - that "wild beast hurling itself against the bars of its cage"[vi] - the centerpiece of their own critique of "rationalized society," as Weber understood it. It is thus not without reason that Adorno and Horkheimer would later cite the recurring motifs of Nietzsche's genealogy - the relationship between exchange and justice as equivalence-retribution-revenge and the erection of rational autonomy on the ruins of a guilty and repressed "conscience" - in building their case against enlightenment.[vii]

But we really owe it to Foucault - who admittedly took his lead from Nietzsche and not from the Frankfurt School [viii]- for having so adroitly exposed the ambivalent effects of this humanistic discourse. According to him, humanism promises emancipation at the cost of imposing uniformity and excluding those who don't fit the mold of a genuine human being. Its *universal scope*, which at first seems so progressive in marking for emancipation women, persons of non-European descent, and the working poor who formerly had been denied their humanity, actually works by subjecting all persons to the hegemonic regimen and discipline of a single, universal code of behavior. Here, reason - conceived as the faculty of universal moral commandments - supposedly dictates clear and precise norms that are susceptible of being administered to a subjugated population in a scientifically rigorous manner by an elite body of technocrats. Corresponding to this regime of knowledge and power we find a parallel universe of self-discovery and *self-control* instituted within each individual, which insures that one's innermost identity as a desiring subject, truly revealed and confessed, will happily synchronize with the innermost identities of other similarly self-constituted subjects. In this way a generalized will to power, thoroughly decentralized, disseminated, internalized and individualized in countless contexts by means of diverse micro-technologies, succeeds in generating that anodyne feeling of freedom and solidarity that earlier social contractarians like Rousseau would have imagined possible only through more coercive, juridical means.

4

Foucault's Critique of Humanism

It is precisely at this juncture where Foucault's difference from Habermas seems most glaring. Habermas, after all, regards his own discourse ethics as the proper heir to Rousseauian social contractarianism. He thus fancies himself an arch defender of human rights and democracy. But Foucault clearly doesn't. And the reasons – all having to do with the frailties of humanism – recall the sordid uses to which these ideals have been put.

First, there are the empirical arguments against humanism. Like Marx, Foucault regards humanism as a contingent phase in Western history that is on the verge of surpassing itself, along with the notion of the sovereign state as the centralized locus of legitimate power. Before there was humanism there was absolutism, which was embedded within an entirely different economy and an entirely different paradigm of knowledge and power. After humanism, there will be the "death of Man," or rather the dissolution of "the subject" into preconditioned habits and reactive responses, in which concepts like "reason," "consciousness," and "rights" as humanism understands them will cease to exist.

Now, Foucault's famous treatment of this shift in *Discipline and Punish* (1975) draws heavily from his archaeological study of knowledge paradigms (*epistemes*) developed in *The Order of Things* (1966). Until the mid-seventeenth century, knowledge and truth were conceived *analogically*; knowing something involved tracing its metaphorical and metonymical relationships to other things. According to this model, the sovereign ruler was virtually identified with his kingdom, and his power was in some sense viewed in terms that were analogous to God's power over his Kingdom, which is to say that it was absolute, unlimited, and in need of no other legitimation. Any law-breaking was thus regarded as a kind of *personal* affront, literally a violation of the sovereign's own bodily integrity. Punishment - which often took the form of public torture and disfigurement - therefore served as a ritual, symbolic restoration and re-integration of the monarch's power at the expense of the victim's dismemberment (*DP*, 49-56). Furthermore, since merely being suspected of

criminal activity by the monarch was considered to be an affront to his person (which was presumed to be relatively infallible in its judgment), a suspect was presumed to be at least partly guilty. Hence, torturing the suspect served to expiate his guilt as well as reveal the full truth of his criminal intent. Failure to extract a confession did not invalidate the sovereign's original suspicion, but it did exonerate the suspect from any further suspicion of criminality.

The important thing to notice here is that it is personal power, divinely and absolutely sanctioned, that determines what is right and true - not humanity, which impersonally lends equal dignity to each and every individual. The rise of humanism changes all that. With the advent of the classical paradigm of knowledge that emerged in the mid-seventeenth century, we notice a new egalitarian spirit. Common sense enables each and every one to *represent* clearly and distinctly the things of nature according to their proper classifications. Applied to the political sphere, common sense speaks through the impartial voice of reason - the unique and supreme expression of our humanity - and perceives the clear limits of arbitrary power in the natural rights of 'Man.' Henceforth sovereign power will be limited and divided into separate powers, and it will be exercised through the people, whose interests and powers it represents. In the age of classical humanism, punishment ceases to be personal vengeance and is instead rethought contractually, as the repayment of a debt that is owed to humanity at large. But respecting the dignity and autonomy of the criminal as one who is rationally accountable for his crime requires extracting this debt in a way that does not do violence to his rational, moral nature. Imprisonment, based upon a precise calculus of social harm and responsibility, thus replaced torture at the end of the classical period. If anything remained of the public spectacle, it was the labor-gangs who 'represented' the moral fault of their criminal idleness in their hard work and passive confinement.

The theme of labor anticipates the refiguration of sovereign power and punishment according to yet another - more modern - humanism. The emergence of capitalism had already rendered the premodern dismemberment and destruction of the body costly. The laboring power of the criminal's body was something to be preserved, strengthened and disciplined. The classical, retributive model of punishment - based upon the contractarian idea of repaying past debts - did not yet capture the

6

utilitarian need to rehabilitate the criminal as a future, productive member of society. Beginning in the nineteenth century, we thus see punishment serving newer and different ends. No longer is one punished according to what one did (a discrete and quantifiable act capable of definite representation) but according to what one might do, based upon a psychiatric examination of one's infinitely malleable and reformable character. In short, punishment increasingly has as its aim the disciplining of the body as a source of *productivity*; and discipline, as a softer and less visible - albeit more global - form of punishment, has as its aim the training of a pliant, productive population (*DP*. 24).[ix]

The new humanism sees knowledge and truth as *produced*, rather than represented, by humanity. Since Kant, German idealists had insisted that humanity transcendentally produces the unified world in which it inhabits through its own knowing activity. In the writings of Fichte and Hegel, humanity is elevated to Promethean dimensions, as the demiurge that continually recreates itself and its world in striving to realize its nature as absolutely free and unlimited. The 'truth' of the new human sciences of psychology and sociology would henceforth consist in furthering this apprenticeship in the art of 'becoming fully human.' This infinite task of reform is throughout guided by an ideal norm of perfection, in comparison to which each and every actual human being is judged to be deficient if not deviant.

The old humanism sought to represent human nature as it is: essentially limited by the laws of God and nature. This deference to God and nature designates its own limitations as humanism: freedom is simultaneously a gift and a necessity imposed upon us whether we like it or not; it is not something that we give to ourselves. Old humanism's defense of freedom is thus inherently conservative: to preserve and protect the natural freedom of the individual against the power of the state. The new humanism does away with this opposition. Far from suppressing freedom, governmental power rather seeks to cultivate and tame it for productive ends. Freedom - or universal human fulfilment - becomes the new goal of social progress, whose revolutionary embodiment is the "pastoral" state.

As depicted in Foucault's writings, the reality of this state is quite the opposite of what it seems. If humanity is something made, it is not made with rational foresight and consciousness. The same applies to the state: it too is the product of many fortuitous events, not all of them reconcilable. Classical humanism vested the legitimacy and sovereignty of the state in its representation of a pre-existing unity: the general and harmonious will of a united people. Modern humanism sees things differently: the state produces this will out of itself. But the truth of the matter is that there is no supreme will, people, subject, or humanity that is guiding this process; and so there is no common humanity being produced. What remains, at the core, are mainly decentralized processes of conditioning and resistance: action and reaction, *biopower*. From the highest echelons of impersonal bureaucratic administration down to the lowest levels of personal self-management, power and agency remain divided and dispersed. The illusion that someone is in control is no doubt aided and abetted by all the micro-techniques of macro- and micro-management that the human sciences proliferate - statistics, archives, metrics, classification schemes, exams, therapies, and disciplines - for use in detaining, surveying, conditioning, partitioning and "governing" discrete and irreducibly diverse populations. But these processes feed off of - and in turn incite - the very reactions they seek to control. So there is no sovereign power and no common humanity striving to embody it; only context-specific relations of force and counter-force that well up inside us in the form of conditioned responses and partially controlled and calculated reactions.

There is, then, no reality to which "Humanity" refers. From a truly enlightened and "scientific" point of view, it would be altogether more accurate to say that there are no self-determining subjects *strictu sensu*, only social force fields traversed by the material effects of labor, language, and desire. But Foucault finds humanism *logically incoherent* in ways that are potentially terrifying, as well. The classical paradigm conceived humanism in terms of a dualistic ontology. Universal humanity here designates an unconditioned immaterial "substance" - reason, or "soul" - which stands opposed to the particular embodied person, with all its determining passions and limitations. Corresponding to this ontological dualism we find an epistemological one: the

knowing subject - which is again conceived as the rational subject - stands opposed to an independent object, which it seeks to represent.

Dualism proves to be the downfall of this paradigm. Simply put, it is impossible to understand how an object can be represented to a subject that is separated from it by such an immense gulf. The problem is magnified further when that object happens to be humanity itself, which - as Kant would later argue - cannot even be thought as an object in the strict sense of the term. Hence Kant's attempt to embed humanity in a more modern - and if you will, more humanistic - paradigm of knowledge. The epistemological dualism between subject and object is overcome once the human subject - or more precisely, a universal transcendental subject - is postulated as constituting objectivity by applying its own universal categories of reasoning to passive sensation. The rest is history. Kant's epigones in the German Idealist tradition successively eliminate the "pre-critical" residues of Kant's humanism -specifically his postulation of a "thing-in-itself" that stands in for the unknowable causal source of sensation - thereby rendering humanity epistemologically and ontologically absolute.

But there remains something odd about this solution. Humanity is postulated as both the totality of reality and knowledge and its original creative source. "Man" is the term we use to designate each and every finite concrete individual as well as the term we use to designate the universal Spirit that both inhabits and transcends the individual. This "transcendental-empirical doublet," as Foucault refers to it (*OT*, 318). has not really expunged the dualism of subject and object, universal and particular. It has only declared the two sides of the equation to be *commensurable* because one side cannot be *thought* without the other. Transferred to a discussion of rights, the identification of humanity or universal reason, conceived as the unconditioned legislator, and the individual embodied person, understood as the legal subject, appears patently paradoxical. How (to rephrase Rousseau's query) can one be obligated to oneself? How can the effect (end) be identical to the origin (cause)? In short, how can one be God?

Dialectical paradoxes like these pose a real danger. Who, after all, is humanity and, more importantly, who in particular speaks for it? Locke, Rousseau, and Kant - the founders of the modern

idea of human rights - defined humanity to suit themselves, and by so doing consigned women, wage laborers, and persons of non-European descent to the status of partial humans. But the danger here of confusing a general attribute with any one of its particular instances is unavoidable, since humanity and the rights that properly accrue to it will remain empty and meaningless - without definition - unless they are spoken for by someone. Conversely, once spoken for and declared, the rights of "Man" - no matter how parochially interpreted to suit the needs of just certain "men" - will take on the dubious ideological status of a timeless and universal truth. Henceforth, women and people of non-European descent will have their humanity measured by the extent to which they have "disciplined" themselves to become like men of European descent. The only proper antidote to this oppressive mystification is to deconstruct the idea of humanity by deploying the same "philosophical-historical" practice as that engaged in by Nietzsche, Marx, and the early members of the Frankfurt School. In the words of Foucault:

> . . . the question is being raised: "what, therefore, am I," I who belong to this humanity, perhaps to this piece of it, at this point in time, at this instant of humanity which is subjected to the power of truth in general and truths in particular? The first characteristic of this philosophical-historical practice, if you will, is to desubjectify the philosophical question by way of historical contents, to liberate historical contents by examining the effects of power whose truth affects them and from which they supposedly derive.[x]

The deconstruction of humanism suggested here announces a form of critique and enlightenment that seems far removed from if not opposed to the concept of critique and enlightenment advocated by Habermas. Speaking of Habermas, Foucault says that the aim of critique should *not* be to "identify general principles of reality" - such as humanity or some other transcendental, universal ground - from which "what is true or false, founded or unfounded, real or illusory, scientific or ideological, legitimate or abusive" can be *known* (*WC*, 200-01). Its aim should

10

rather be the genealogical tracing of the "conditions for the appearance of a singularity born of multiple determining elements of which it is not the product but the effect" (*WC*, 203). In other words, genuine critique should be less concerned about its own truth or untruth and more concerned about clarifying - in some imperfect and unavoidably partial way - the peculiar historical conditions in which it operates.

Habermas's Response to Foucault

But can we criticize and resist these peculiar historical conditions without the aid of humanism and its sacred rights? There was a time when Foucault thought so: "if one wants to look for a non-disciplinary form of power, or rather, to struggle against disciplines and disciplinary powers, it is not towards the ancient right of sovereignty that one should turn, but towards the possibility of a new form of right, one which must indeed be anti-disciplinarian, but at the same time liberated from the principle of sovereignty" (*PK,* 108).

Habermas's response to Foucault can be understood as an attempt to fulfill at least part of this aspiration. Although he doubts whether any anti-disciplinarian right can be formulated that doesn't appeal to human rights, he does think that humanism and its sacred rights can be "liberated from the principle of sovereignty" (or, as Habermas puts it, the principle of "subject-centered reason"). In other words, Habermas thinks that Enlightenment humanism can be interpreted in ways that avoid the philosophical paradoxes adduced by Foucault. Furthermore, Habermas thinks his explanation shows not only why humanism is still alive and kicking - as a factual force within *post*-subject-centered society - but also why it designates a relatively permanent disposition toward emancipation within all human society.

As for the "normalizing" features of disciplinary society that both he and Foucault criticize, Habermas locates their cause not in philosophical humanism, but in certain "social pathologies" associated with class societies and, more specifically, of late capitalism.[xi] Like Foucault, Habermas deplores the extent to which dividing practices and hierarchies of knowledge undermine persons'

critical aptitudes. The intensive division of intellectual and manual labor and the splitting-off of specialized forms of technical expertise, he notes, all too easily lend themselves to centralized, top-down management, routinization and normalization, conformity, and rigid discipline. He shares Foucault's conviction that governmental paternalism in dispensing social welfare robs citizens of their freedom, dignity, and individuality. But that is precisely the point. Were it not for the vitality of humanism, would persons even complain of their dehumanization? Would parents and teachers resist the bureaucratization of schools? Would social workers and clients, nurses, doctors, and patients, resist the bureaucratization of their health and welfare *(PDM,* 287)? And what about Foucault 's defense of the rights of prisoners, homosexuals, and mental patients (*PDM*, 290)? Last but not least, could the author of "Confronting Governments: Human Rights" (1984) have written these words sincerely if he had not been a humanist?

> There exists an international citizenship that has its rights and its duties, and that obliges one to speak out against every abuse of power, whoever its author, whoever its victims. After all, we are all members of the community of the governed, and thereby obliged to show solidarity.[xii]

Habermas suspects that Foucault's yearning for "new rights" is really nothing more than a yearning for a less problematic philosophical paradigm in which to formulate the old human rights. In any case, the "crypto-normativity" of Foucault's rhetorically charged genealogies (as Nancy Fraser puts it) shows that Foucault is not the "happy positivist" he claimed to be.[xiii] If it turns out that Foucault is a kind of humanist after all, we shall have to turn to Habermas in order to understand why.

Let's begin with Habermas's attempt to reinterpret modern humanism in a way that makes no reference to that sovereign super-subject, humanity. The reader will recall that this notion implies both an epistemological and an ontological dualism that is as dangerous as it is incoherent. This dualism can be formulated in many ways. On one hand, it denotes a subject that knows an object only by superimposing its own unitary identity

on it. Ontologically, it denotes a transcendent - universal and unconditioned - ground of agency that conditions the activity of individual embodied subjects. This super-sensible ground - characteristically identified with Reason - develops and progressively realizes its essential freedom in the course of history. In all these instances, humanity appears as a contradictory identity of opposites. More importantly, from Rousseau on, this philosophical (or conceptual) dialectic is thought to underlie a real practical one: the so-called "Dialectic of Enlightenment." According to this dialectic, humanism is inherently ambivalent. Historical progress in enlightenment and emancipation simultaneously appears as historical regression to mythic fatalism. Modernists like Marx and Nietzsche respond to this dialectic by projecting a good outcome in the end ("communism," the "end of man," etc.); anti-modernists like Heidegger do so by nostalgically recovering (if only in "poetic thinking") a prelapsarian origin unsullied by metaphysical "Man."

Now, Habermas proposes to dissolve this dialectic by re-founding the idiom of human rights on a new philosophical paradigm: *communication*. Prior to the linguistic turn - and more precisely, prior to the pragmatist linguistic turn inaugurated by the late Wittgenstein - philosophers were mainly obsessed with the problem of knowledge, which they characteristically interpreted in Cartesian terms. This problem begins with a lone subject who seeks certainty regarding objects in the world outside of its immediate stream of consciousness. Subjective partiality is avoided and objective certainty achieved by recourse to innate reason, or common sense. But it is precisely here where all the problems of classical and modern humanism begin. A better place to begin, Habermas believes, is with social interaction - or *intersubjectivity*. This is because social interaction is the foundation for both subjectivity and knowledge. Without socialization there would be no individuation and no subjects. And without people raising claims about the world that can be checked by others, there would be no knowledge, no "impartial" belief.

13

Speech action (or what Habermas calls "communicative action") is thus the primary medium in which subjectivity and knowledge emerge. Unlike knowing subjects, speakers do not relate to one another in the mode of "spectators" observing one another as "objects." Rather, they relate to one another in the mode of "participants" engaged in a process of mutual engagement and understanding. Here, what is mutually communicated, shared, and agreed upon - intersubjectivety - takes precedence over subjectivity. This means that there are no subjects, understood as absolutely autonomous and self-determining centers of activity - and no humanity, conceived as the universal, sovereign ground of that activity.

> If we abandon the conceptual framework of the
> philosophy of the subject, sovereignty need not be concentrated in the
> people in a concretistic manner . . . . The "self" of the self-organizing legal
> community disappears in the subjectless forms of communication that
> regulate the flow of discursive opinion- and will-formation whose fallible
> results enjoy the presumption of rationality. This is not to repudiate the
> intuition associated with the idea of popular sovereignty but rather to
> re-interpret it in intersubjective terms. [xiv]

Decentering "humanity" in this way does not mean that all forms of ontological and epistemological dualism associated with that concept have been dissolved. The dualism between truth and falsehood, right and wrong is still preserved, along with the dualism between impartial and partial, rational and irrational, perspectives. Retaining these dualisms is important for Habermas, because social criticism is impossible without them. And this, precisely, is the benefit of humanism - the establishment of a common, impartial reference point from which "we" can assert something like "human rights." But the meaning of humanism and its duality changes once it is translated into the register

of communicative action. The dualism between "impartial reason" and "partial belief," for instance, no longer designates a *metaphysical dualism* internal to the individual subject, but rather an *empirical distinction* - and a relative one at that - between two types of intersubjective communication: inclusive, egalitarian, and unconstrained on one side, and closed, hierarchical, and constrained, on the other.

Now we are in a better position to understand how a communicative paradigm might avoid the paradoxes of humanism associated with a subject-centered paradigm.

> The transcendental-empirical doubling of the relation to self is only unavoidable so long as there is no alternative to this observer-perspective; only then does the subject have to view itself as the dominating counterpart to the world as a whole or as an entity appearing within it. No mediation is possible between the transcendental I and the intramundane stance of the empirical I. As soon as linguistically generated intersubjectivity gains primacy, this alternative no longer applies. Then ego stands within an interpersonal relationship that allows him to relate to himself as a participant in an interaction from the perspective of alter. And indeed this reflection undertaken from the perspective of the participant escapes the kind of objectification inevitable from the reflexively applied perspective of the observer (*PDM*, 297)

Subject-centered humanism encourages each of us to divide ourselves into opposed parts: one transcendental (universal humanity) the other empirical ("me"). "I" become a "free" human only to the extent that I direct my higher rational subjectivity against my lower, embodied subjectivity, and reflect upon this latter syndrome of bodily desires and conditioned habits as a natural object that can be rationally controlled and, if need be, dominated and repressed. Communication-centered humanism, by contrast, postulates

15

no such division. Under it's guidance I become a free human by participating in open, inclusive, and unconstrained discussion regarding the compatibility of my needs with respect to others. Critical reflection is "from the angle of vision of the second person," and this person is not a super-human observer, evaluator, and executor, but just another partial participant.

The advantage of this paradigm becomes readily apparent when we recall our earlier discussion of dehumanization and human rights. Habermas, like Foucault, sees dehumanization as an over-extension of subject-centered (or instrumental) reason. Unlike Foucault, however, he also sees this over-extension as a "distortion" of communicative reason, and a distortion moreover, that is not caused by something as abstract as Enlightenment humanism, but by something as concrete as capitalist economic growth and its side effects, which call for ever-growing bureaucratic regulation of everyday life.

> Horkheimer and Adorno have, like Foucault, described this process of a self-overburdening and a self-reifying subjectivity as a world-historical process. But both sides missed its deeper irony, which consists in the fact that the communicative potential of reason first had to be released in the patterns of modern lifeworlds before the unfettered imperatives of the economic and administrative subsystems could react back on the vulnerable practice of everyday life and could thereby promote the cognitive instrumental dimension to domination over the suppressed moments of practical reason. The communicative potential of reason has been simultaneously developed and distorted in the course of capitalist modernization (*PDM*, 315).

16

As for human rights, subject-centered humanism encourages us to discover them by simply tapping into our higher rational humanity. Each of us does this in isolation from others, by simply gazing inward. Our innate conscience is all we need rely on in knowing what is right. Unfortunately, our "reason" is all too often clouded by personal bias. Eliminating bias by striving for ever higher levels of abstraction on which all our reasons converge leaves us with nothing more than empty platitudes. We may disagree about the rightness of abortion but who can dispute the notion that every human should have a right to life with human dignity? Communication-centered humanism, by contrast, mitigates bias without sacrificing prescriptive specificity by encouraging us to reason together. In this way, the meaning of human rights is not absolutely fixed for all times and places, but is subject to concrete historical and contextual interpretation.

How far does this response go toward answering Foucault's objections to humanism? Perhaps not far enough. Some critics argue that Habermas's theory of communicative action has not entirely escaped the clutches of subject-centered philosophy.[xv] After all, hasn't Habermas himself said that inclusiveness, reciprocity, and freedom from constraint are necessary, universal norms of rational argumentation (discourse), so that arguers who refuse to acknowledge them are, in effect, committing a "performative contradiction"? And doesn't saying this amount to postulating a kind of transcendental subjectivity, if only as the theoretical culmination of a logic of moral development that should - but need not - be historically actualized?

Perhaps not quite, if we are to take Habermas's word for it. Habermas insists that "communication is neither a unitary process of self-generation [whether of the spirit or of the species]" nor an alien fate to which we must submit. Although he himself subscribes to Kohlberg's hypothesis regarding logical stages of moral development (suitably translated into stages of moral communication), he reminds us that actual progress from stage to stage is contingent on external circumstances. Furthermore, he recognizes that "even basic concepts that are starkly universalist have a temporal core"

17

(PDM, 301). The freedom and equality enjoyed by the eighteenth-century shopkeeper are not the same as that vouchsafed to present-day clients of the modern welfare state.

This is one reason why Habermas, unlike his colleague Karl-Otto Apel, resists the temptation to claim anything like a strong transcendental justification for norms of communicative rationality. Pure philosophical reflection and conceptual analysis alone cannot confirm the empirical existence and efficacy of these norms apart from social science. It may well be that we know of no other way to interpret the notion of rational persuasion except by appeal to these norms; but that is at least partly a matter of disputable fact, not of intuitive certainty. In any case, the actual meaning and force of communication norms is always partly and perhaps largely contextualized with respect to actual -spatially and temporally delimited - processes of communication. This applies to the justification of human rights, as well. As Habermas points out, even if one might plausibly argue that some human rights - such as freedom of speech, freedom of association, and freedom of conscience - were instrumentally justifiable as necessary conditions for communicative rationality, this would not apply to all human rights. And even if it did, the "realization of human rights" - their precise definition as enforceable, legal rights - would vary depending upon the local speech contexts in which they were received.[xvi]

Hence Habermas today is much more sensitive to the notion that "we" who interpret rights designates a *plural and multicultural* nexus of many *different identities* whose being is never theoretically or ideally pre-given but is always in the process of changing in the course of historical political struggle:

Ethical discourses aimed at achieving a collective self-understanding
- discourses in which participants attempt to clarify how they understand themselves as members of a particular nation, as members of a

18

community or state, as inhabitants of a region, etc. which traditions they wish to cultivate, how they should treat each other as minorities, and marginal groups. . . constitute an important part of politics. But under conditions of cultural and social pluralism . . .there often lie interests and value orientations that are by no means constitutive of the identity of the political community as a whole. . .(*TNMD*, 156).

Foucault's Later Humanism

Toward the end of his life Foucault wryly observed that he was "in a little more agreement" with Habermas than Habermas was with him. This agreement is strongly reflected in Foucault's later embrace of certain humanistic ideals of the Enlightenment, including the notion that there may well exist trans-historical or "permanent" dispositions among all humans to resist government, broadly conceived. On this reading, universal norms of communication such as unconstrained consensus and rights to question are crucial ideals to defend. We would therefore be well advised to see how Foucault rephrased the convergence of his later theory with Habermas's, while at the same time keeping in mind his belief that he and Habermas were embarking on very different critical projects.[xvii]

The extent to which Foucault's critical project converges with and diverges from Habermas's can be gleaned from his monumental history of sexuality. The last two volumes of the *History of Sexuality* published during his life marked something of a watershed in Foucault's understanding of his life's work. He now admitted that his central preoccupation with humanism (or as he now put it, the "relationship between the subject and truth") could best be approached by way of a genealogy of ethical self-understanding. What now occupies center stage in his analysis is the way in which persons voluntarily and intentionally subject themselves to technologies of self-control - technologies that are embedded in specific practices and types of knowledge determinant of a way of life, a manner of self-understanding, an identity - in short, an *ethos (UP, 10).*

19

These practices exhibit their own continuity through time. In contrast to Foucault's earlier emphasis on epistemological breaks, his genealogical account of the Christian ethos that has shaped the modern age acknowledges superficial resemblances between its moral codes and those of its Greek and Greco-Roman predecessors. If we think of the moral code as "the set of values and rules of action that are recommended to the individual through the intermediary of various prescriptive agencies," then all three systems are alike in their prescription of sexual abstinence (UP, 2 5). Despite his concession that there were universal constants at play traversing the three ethical schemes, Foucault maintained that there were perhaps deeper rifts embedded in their "ethical substance." In other words, "the way in which the individual has to constitute this or that part of himself as the prime material of his moral conduct," might differ historically, despite the superficial commonality in the way in which sexuality is talked about. (UP, 26). Some ethical regimes place greater emphasis on the moral code, its systematicity and inclusiveness. Here adherence to law is decisive in determining the mode of subjection. Others place emphasis on the esthetics of self-transformation. The Christian ethos and especially its modern, secular equivalent tend toward the former; the Greek and Greco-Roman ethic, toward the latter (*UP*, 21, 31). The difference between the three becomes apparent when examining the ethics of sexual abstinence. Whereas the Greek ethos sought to cultivate a moderate use of pleasure for the sake of personal and civic virtue, and the Greco-Roman ethos sought to cultivate a solicitous care over the self for the sake of rationally administering a complex identity, the Christian ethos seeks to cultivate a hermeneutics of desire aimed at discovering the hidden truth of the soul. Its renunciation of a fallen self that is permanently deceived about itself marks the transition to a deontological ethic that privileges dutiful obligation to moral law over esthetic self-realization.

Now it is well known that Foucault identified his own critical project in terms of the kind of virtue ethic exemplified in these pre-modern ethical orientations. As he put it, "There is something in critique which is akin to virtue . . . . [the] critical attitude as virtue in general" (*WC*, 192). Indeed, this is one the features that seems to distinguish his critical project from Habermas's, which is so concerned with legitimating human rights.. However, it would be wrong to liken this retrieval of an earlier ethical orientation as a "conservative" rejection of modern ethics, as Habermas once thought (*MP*, 354).[xviii] Foucault disdained the idea of returning to the past. More importantly, as we shall now see, Foucault later situated his project within the same modern moral framework shared by Kant and Habermas. What results from this

amalgamation of the ancients and the moderns is a distinctively "postmodern" virtue ethic that privileges the radical freedom to resist normalization as such.

Foucault tells us, in fact, that the critical attitude we typically associate with the modern Enlightenment arises "in any moment of history" in which governmentality, or the relationship between "power, truth, and the subject" is questioned *(WC, 199)*. Foucault's invocation of a "critical spirit" running throughout human history sounds very humanistic, and is confirmed by his view about human thought itself:

> Thought . . . can and must be analyzed in every manner of speaking, doing, or behaving in which the individual appears and acts as subject of learning, as ethical and juridical subject, as subject conscious of himself and other. In this sense. thought is understood as *the very form of action - as action insofar as it implies the play of true and false, the acceptance or refusal of rules, the relation of oneself to others....* Posing the question in this way brings into play certain altogether *general principles.* Singular forms of experience may perfectly well harbor *universal structures;* they may well not be independent from the concrete determinations of social existence ... [t]his thought has a historicity which is proper to it. That it should have this historicity does not mean that it is deprived of all *universal form,* but instead the putting into play of these universal forms is itself historical *(FR, 335 - my stress).*

What are these universal structures of human thought and action? Foucault gave different answers to this question during his lifetime. However, on occasion he appealed to none other than Habermas himself - specifically Habermas's theory of knowledge constitutive interests - in arguing that human nature is motivated by three quasi-transcendental orientations, toward: (a) technical or instrumental control of nature, (b) practical communication aimed at mutual understanding, and (c) resistence to domination. According to Foucault:

power relations, relationships of communication, objective capacities should not therefore be confused. This is not to say that there is a question of three separate domains. Nor that there is on one hand the field of things, of perfected technique, work, and the transformation of the real; on the other that of signs, communication, reciprocity, and production of meaning; finally that of the domination of the means of constraint, of inequality and the action of men upon men. It is a question of three types of relationships which in fact always overlap one another, support one another reciprocally, and use each other mutually as means to an end (*SP*, 217-18).

Significantly, as we saw above, Foucault elsewhere adds a fourth "transcendental" structure to this constellation of "techniques": "technologies of the self."[xix] The question we must ask is: Why did Foucault feel compelled to supplement Habermas in this way?

To answer this question, we must look more closely at what Foucault found problematic in Habermas's theory. Foucault is especially interested in what Habermas has to say about communicative action and domination (power). Foucault seems to accept Habermas's general characterization of consensual communication as foundational for the raising of validity claims and the incurring of general obligations in a modern society. This impression is reinforced by his remark that

in the serious play of questions and answers, in the work of reciprocal elucidation, the rights of each person are in some sense immanent in the discussion.... The person asking the questions is merely exercising the right that has been given him: to remain unconvinced, to perceive a contradiction, to require information, to emphasize different postulates, to point out faulty reasoning (*FR,* 381).

Elsewhere Foucault takes issue with Habermas's idealization of consensual communication, denying that "there could be a state of communication which would be such that the games of truth

could circulate freely, without obstacles, without constraint and without coercive effects." Stated bluntly, Foucault thinks that Habermas's assessment of the prescriptive value to be accorded unconstrained consensus is too utopian.

> It is being blind to the fact that relations of power are not something bad in themselves, from which one must free one's self. I don't believe there can be a society without relations of power, if you understand them as means by which individuals try to conduct, to determine the behavior of others. The problem is not of trying to dissolve them in the utopia of a perfectly transparent communication, but to give one's self the rules of law, the techniques of management, and also the ethics, the *ethos,* the practice of self, which would allow these games of power to be played with a minimum of domination.[xx]

In this passage Foucault hints at why we need to supplement the critique of ideology and, along with it, the democratic legitimation of law, with an ethics of virtue based upon "technologies of the self." Ideology critique and democracy are no more immune from the effects of power and domination than any other regime of "knowledge" and "legitimation." The "power- knowledge " exerted by "expert" critics - be they psychoanalysts or critical social theorists - and the "power-politics" exerted by democratic majorities must in turn be resisted by the counter-power exercised of virtuous subjects. Taken in their own right, none of these forms of power are bad. Indeed, all of them can be put to good use. But all of them need to check one another in a balanced play of forces.

Just how far this language of strategic gaming can be reconciled with the language of constraint-free mutual understanding promoted by Habermas will become apparent shortly. Of course, such a reconciliation would have seemed preposterous to Foucault and Habermas. But then again, since neither really understood the other, why should we take their opinions as Gospel truth? To take one glaring example, Foucault's imputation that Habermas is advocating a utopian view of constraint-free communication simply contradicts what Habermas himself repeatedly said on the subject. Habermas denied that "perfectly transparent communication" was possible, since we are at most capable of reflecting on only a portion of our preconscious, taken-for-granted assumptions at any given time. And he denied that the kind of power-free "ideal speech situation" presumed by speakers engaged in rational argumentation was – or even should be – realizable. Indeed, this "counterfactual assumption" is only weakly regulative: it does not

enjoin the realization of "ideal speech" - as Habermas never ceases to point out, there are many economic and administrative contexts in which engaging in communicative interaction is either inefficient or inappropriate - but at best warrants the questioning of any factual consensus as ideological.

So Habermas and Foucault both agree that there is no such thing as communication unconditioned by the effects of power and that certain forms of power can be productive, positive, enabling, and empowering. That said, there remains an important point of contention between Foucault and Habermas: Habermas continues to emphasize the value of "truth" or "right" as a hedge against power, whereas Foucault doesn't. Like Nietzsche, Foucault is deeply skeptical of all knowledge claims. Because knowledge claims are conditioned by historical frames of understanding that have been partly constituted and affected by subliminal "power relations," Foucault wonders what it could possibly mean to "justify" (legitimate) a claim as true or valid. In short, in Foucault's account, all validity claims (as Habermas puts it) are necessarily partial, constrained, and illegitimate - even if only somewhat. Hence, for him, critique must take the negative form of "de-legitimizing" claims: "all knowledge rests on injustice (there is no right, even in the act of knowing, no truth or foundation for truth)" (*LCP*, 163).

I will return to this provocative thesis at the conclusion of my essay, for it suggests why Foucault is more attracted to a virtue ethics of personal, existential resistance than he is to a deontological ethic based upon impersonal rights. Before doing so, however, I would first like to return to a problem I mentioned above regarding the apparent tension between Foucault's description of social interaction as pre-eminently "strategic" and Habermas's description of the same as pre-eminently "consensual." This little detour will help us understand the extent to which power might be productive of "truth" and "right." Understanding this will in turn shed light on the way in which Foucault regards "power" as a kind of quasi-transcendental locus of productivity, a position Habermas criticizes - wrongly I believe - as metaphysical.

Power and Action

In the passage cited above, Foucault asserts that he is following Habermas in claiming that power (domination) is a "transcendental" on a par with communicative relationships and instrumental capacities. However, in only one of the possible texts to which Foucault might have been referring does Habermas even remotely suggest

that power is a transcendental medium of knowledge and action. The issue is further complicated by the fact that Habermas often has in mind many different notions of power. In the text cited by Foucault, *Knowledge and Human Interests (1968),* Habermas suggests that domination (*Herrschaf*t) is not a transcendental, or necessary feature of the human condition, like the other two orientations, but a contingent feature associated mainly with class societies. In a somewhat later essay, Habermas closely follows Hannah Arendt in opposing power (*Macht*), conceived as united action based upon voluntary, communication-based consent, to domination, or violence aimed at asymmetrical instrumental control.[xxi] In yet another venue - the *Theory of Communicative Action* (1981) - Habermas discusses other senses of power associated with what he calls strategic "speech acts" and "power-backed" systemic imperatives. Only here could it be said that Habermas accepts the "necessity" of power in structuring human relationships.

In truth, both Foucault and Habermas regard power as a permanent, if variable, feature of society. For Habermas, the manifestations of power, ranging from relatively innocuous forms of subtle influence to overt forms of violent domination, vary both structurally and historically. From a structural point of view, power may designate a feature of *speech action* or a mechanism of *system integration*. As a feature of a speech, it specifies the peculiar sanction of authority backing up commands. Although in the *Theory of Communicative Action* Habermas categorically distinguished commands backed by mere threat of force from commands backed by rationally binding moral authority, in a more recent reply to critics he conceded that "a continuum obtains between power that is merely a matter of factual custom and power transformed into normative authority."[xxii] Such a continuum is attested to by the simple fact that *rationally binding* moral platitudes such "Tell the truth!" are initially learned as commands backed by threat of sanctions.[xxiii]

A similar continuity obtains when power is viewed as a vertical mechanism of systemic integration.. [xxiv] Even prior to the splitting off of autonomous economic and political subsystems, the exercise of power in stratified tribal societies, Habermas notes, occurs in the form of *personal* prestige and influence. Importantly, this kind of power need not rely on sanctions. The asymmetrical exercise of power owing to differences in lineage, gender, and generation is still interwoven in consensus-oriented communication between persons who, morally speaking, remain mutually accountable to one another. Today, this same burden falls on technical experts, despite their monopoly on the power of expertise. By contrast, the bureaucratic power exercised in modern

organizations depends on *impersonal* legal sanction. Here the exercise of power is largely relieved of the above burden. I say "largely" because, for Habermas, the exercise of administrative power still requires democratic legitimation, which occurs within the medium of consensus-oriented communication. Although the government relies upon legal coercion - not negotiation - in exacting compliance, this strategic medium remains subject to judicial and public oversight (*Reply*, 254-58).

In a manner that invites comparison with Habermas's taxonomy, some of Foucault's late interviews also distinguish between levels, or degrees, of power, domination, and governance.[xxv] Whereas domination involves unilaterally exercising uncontested power over others, governance - even between unequals - involves some reciprocal give and take.[xxvi] Strategic relationships like this can even be perfectly reciprocal. Indeed, the most striking thing about Foucault's discussion of strategically exercised power is that he does *not* oppose such power to consensus-oriented communication.

Habermas's tendency to do just the opposite partly reflects his somewhat idiosyncratic understanding of strategic action. As Habermas understands it, strategic action occurs whenever one or more actors pursue personal aims by influencing the behavior of others through threat of force, covert manipulation, or some other instrumental inducement. Often this requires concealing a strategic motive behind an apparently open and consensual one (*TCA I*. 10, 85, 273-4). But this is not the only notion of strategic action Habermas has in mind, as is evidenced by his discussion of rhetoric and indirect communication[xxvii]. More importantly, it is *not* the notion that Foucault has in mind, either. Indeed, the egoism and atomism that Habermas, like many game theorists, attributes to strategic action are much less pronounced in Foucault's account of strategic relations, since he repudiates methodological individualism. On the contrary, if his notion of strategic action comports with any model of gamesmanship, it would be the model of "play" that Hans-Georg Gadamer has argued underlies all forms of *consensual understanding*.[xxviii]

Foucault tells us that a strategic power relation is "not simply a relationship between partners, individual or collective; it is a way in which certain actions modify

others" (*SP*, 219). This comports with Gadamer's concept of free play, in which it is the *preconscious subtext of the speaker's utterance* (including the perlocutionary, affective, and rhetorical force of speech) that draws out and elicits a response from the listener. To this extent, subjective agency remains beholden to actions that have a meaning (power and efficacy) all their own, independent of consciously intended aims. This is not a relationship of violence, but requires "that 'the other' (the one over whom power is exercised) be thoroughly recognized and maintained to the very end as a person who acts" (*SP*, 220). This is to say that "power is less a confrontation between two adversaries or the linking of one to the other than a question of government": the structuration of a field of possible responses (*SP*, 221). According to this latter reading, not only are freedom and power not mutually exclusive, but "freedom may well appear as the condition for the exercise of power" (*SP,* 220). Hence the free play of actions and effects is not entirely independent of rational agency - it presupposes a real and, as we shall see, legal capacity for initiative and counter-initiative - but it is not reducible to it, as Habermas would like to think it is.

Speech act theory provides ample confirmation of this interplay of freedom and power. Take the example of promising. As Habermas notes, the freedom of the addressee depends on his or her capacity to refuse the promise. This offer thus presents an opportunity for exercising freedom; that is, it opens up a field of possible responses on the part of the addressee. We might say that, by taking the initiative in opening up a determinate field of possibilities, the speaker's offer constitutes a deployment of power whereby the response of the addressee is conducted. This conducting, however, is not a manipulating. At best, only a field of possibilities - one that is relatively open - is offered up by the speaker. This offer both limits and enables a range of responses, one of which is refusal and resistance. The freedom and power of the addressee is conditional for the freedom and power of the speaker and vice versa. Promise-making, for instance, would be meaningless if the addressee had no choice but to accept the offer. The free consent of both speaker and addressee is at play here since, as Kant himself famously showed, without the assumption of reciprocity that accompanies promise-making, the manipulation of the promise-breaker would never succeed.

These remarks are important not only because they suggest that strategic reciprocity is prior to strategic manipulation, but also because they imply that strategic actors - far from being passive bearers of functional roles and internalized norms - actively and freely contribute to structuring the field of possible responses. Strategic power and consensual freedom thus constitute one another, and both are necessary features of social relationships.

Critical Practices: The ambivalence of Enlightenment

What implications does Foucault's belief in the transcendental necessity of power have for critical practice? In his late commentary on Kant's famous essay of the same title, "What Is Enlightenment?" (1784), Foucault contrasts two types of critical practice, both of which he finds implicit within Kant's philosophy:

> Criticism indeed consists of analyzing and reflecting upon limits. But if the Kantian question was that of knowing what limits knowledge has to renounce transgressing, it seems to me that the critical question today has to be turned back into a positive one: in what is given to us as universal, necessary, obligatory, what is occupied by whatever is singular, contingent, and the product of arbitrary constraints? The point, in brief, is to transform the critique conducted in the form of necessary limitation into a practical critique that takes the form of a possible transgression. . . This entails the obvious consequence: that criticism is no longer going to be practiced in the search for formal structures with universal value, but rather as a historical investigation into the events that have led us to constitute ourselves and to recognize ourselves as subjects of what we are doing, thinking, saying. In that sense criticism is not transcendental, and its goal is not that of making a metaphysics possible. . . it will not seek to identify the universal structures of all knowledge or of all possible moral action, but it will seek to treat the instances of discourse that articulate what we think, say, and do as so many historical events. And this critique will be genealogical in the sense that it will not deduce from the form of what we are to what it is impossible for us to do and to know; but it will separate out, from the contingency that has made us what we are, the possibility of no longer being, doing, or thinking what we are. . . . It is seeking to give new impetus, as far and wide as possible, to the undefined work of freedom (*FR*:46).

Let us be very clear about what Foucault is saying here. He is not denying the existence of general conditions that both constrain and make possible the peculiar mode of being we commonly associate with modern humanity - that

much we have already established. The "universalizing tendencies" he discovers at the root of Western civilization - "the acquisition of capabilities and the struggle for freedom" - have constituted, in his opinion, "permanent elements" (*FR*:48). That is why he characterizes "our" freedom has an "ascetic task" of self-production that is both discipline *and* limit. As he puts it, "modernity does not 'liberate man in his own being'; it *compels* him to face the task of producing himself" (*FR*:42--my emphasis).

Yet it is precisely this compulsion to be modern that in Foucault's judgment renders any justification of modernity itself problematic. Although one might hypothesize about the conditions that define and limit the modern compulsion to be free, one could not claim any transcendental certainty for them. In any case, if the enlightenment is part of the "historical ontology of ourselves" that has determined *who* we are, it would make no sense to be for or against it (*FR*:43). Because it is meaningless to legitimate what is beyond choice, and because there is no emancipating knowledge that is not itself inherently partial and conditioned by preconscious effects of power, one must remain content to do the one thing that is existentially possible, namely, freely reinterpret and live it in a manner that best accords with one's singular understanding of who one is.

If Foucault eschews the role of Kantian legislator in favor of playing transgressive critic, it is only because he no less than Habermas posits freedom - the compulsion to be free - as a kind of irresistible "limit" on our transgressive practice. Or perhaps we should say "enabling condition." For, in truth, are not Habermas and Foucault describing social structures that, in some sense, both enable and empower us to resist and question power? Likewise, once we accept the notion that all knowledge is itself inherently fallible, might we not say that we "know" - at least in some provisional sense that encourages endless disputation and justification - that we are compelled and enabled to be free? And isn't this all that Habermas means by legitimation?

But - you say - Foucault is not Habermas. He has given up the notion that critical resistance *must be* justified. If genealogical critics are called upon to justify their "claims," they will not do so by offering reasons that will be compelling to everyone. Using widely accepted scientific and historical practices need not entail acceptance of their deeper truth or impartiality. [xxix]

Habermas finds this insouciant disregard for knowledge-based justification highly paradoxical. How can Foucault expect others to take his claims seriously if they are not backed up with justifications supporting their truth

and rightness, however contingent and fallible such arguments might be? Anyway, isn't Foucault contradicting himself when he claims to know that there is no knowledge? [xxx]

One way to extricate Foucault from this dilemma is to take seriously his suggestion that critical practice can take non-discursive forms. In the last course he conducted at the College de France in 1984, Foucault talked about a different kind of self-justification modeled on the *parrhesia* practiced by ancient Greek and Roman ethicists.[xxxi] The emphasis here is on producing a "true life" through one's bearing and demeanor. In Habermas's scheme, such a notion of truth-telling is still implicitly discursive insofar as it tacitly raises esthetic-expressive claims to truthfulness *(Wahrhaftigkeit)* and authenticity *(Eigentlichkeit).* But even if this were true, the peculiar justification of such claims would not be anything like the justification of truth or validity claims. For in this case, Habermas concedes, justification resides almost entirely in conducting oneself consistently and resolutely.

Now, Foucault's interest in *parrhesia* centers on its exemplifying a *non-discursive* form of justification in precisely this sense. In other words, we might take this to mean that, for Foucault, critique really is nothing more than the embodied exemplification of virtuous resistance, "performed" as Judith Butler says, but not rationally justified.[xxxii] But it would be hard to square this assessment with his assertion that consensus remains "a critical idea to maintain at all times." Indeed, far from dispensing with discursive reason as a critical tool, Foucault, as we saw, actually affirms the mutual and unavoidable interaction between communicative, strategic, and expressive types of action. According to him, one must "ask oneself what proportion of nonconsensuality is implied in such a power relationship, and whether the degree of nonconsensuality is necessary or not" so that "one may question every power relationship to that extent" (*FR*, 379).

Parrhesia, must itself be reconfigured as a social virtue that also impinges on issues of *social justice* in which the *rights* of *others* are at stake. As such it must combine two distinct critical techniques: one that is aesthetic and transgressive and another that is moral and discursive. *Transgressive critique* resists normative *limits.* It invents new vocabularies for describing who we are and who we want to be as individuals - all new ways of expressing and caring for ourselves. Finally, it elevates to a fine art the "undefined work of freedom that is condemned to creating its self-awareness and its norms out of itself" (*TAHP*, 106). Hence it principally acts upon "bodies and pleasures" rather than upon minds and reasons.[xxxiii] *Ideology critique*, by contrast, embraces normative limits. Ideals of truth and

30

justice inspire us to seek our own empowerment in concert with others. They compel us to reason together as free and equal participants in a democratic form of life.

Democratic accountability designates an on-going process of questioning, resisting and dissenting. On this point Foucault and Habermas are in perfect agreement. As the passage I cited earlier clearly shows, Foucault no less than Habermas appeals to unconstrained dialogue as a standard of critique. Is this not to say that he too accepts the practice of legitimation?

The burdens of legitimation fall upon persons who are committed to reserving as much freedom for others as they reserve for themselves. This kind of freedom would scarcely be imaginable outside of a constitutional framework that protects against the intrusive and constraining power of those anonymous systems of surveillance and discipline that find their maximum concentration in the state. By the same token, it can be argued that the framework itself is in jeopardy when people cease to question its meaning. Each must interpret this framework as a realization of both their common humanity and their unique individuality. Humanity and individuality mediate one another and both refer to needs and desires. Hence the integrity of a system of rights must depend on the extent to which legal subjects have freely cultivated their own *aesthetic sensibilities.*[xxxiv]

Alienation, Aesthetics, and The Limits of Ideology Critique

Habermas is fond of saying that values interpret our needs; they relate our physiological and corporal being to our spiritual yearning for complete happiness. Freedom and duty do not exhaust our ethos. Ruminating on the limits of a form of social criticism oriented exclusively toward questions of justice and domination, he once asked:

> Is it possible that one day an emancipated human race could encounter itself within an expanded space of discursive formation of will and yet be robbed of the light in which it is capable of interpreting its life as something good? The revenge of a culture exploited over millennia for the legitimation of domination would then take this form: right at the moment of overcoming age-old repressions it would harbor no violence, but it would have no content either.

Social justice - to paraphrase Habermas - is no substitute for social happiness. And here we need to recall that last vestige of eudaimonistic Marxism in Habermas's theory of communicative action. According to Habermas,

capitalism necessitates unhappiness. It promotes a *selective rationalization* in which "one cultural value sphere" - in this case, the moral-ethical-aesthetic sphere - "is insufficiently institutionalized without a structure-building effect for the whole of society and (at least) one sphere of life" - the economic-administrative sphere - "prevails so far that it subordinates other orders of life under its alien form of rationality" (*TCA I,* 240). Simply put, capitalism *alienates* us from our lifeworld, in which individual needs are interpreted by shared values that in turn aspire towards a felicitous state of harmony. Capitalism has thus "found some functional equivalent or ideology formation," which consists in frustrating this harmonization by "preventing holistic interpretations from coming into existence" (*TCA II*, 383).

Now, there is no other guidepost for determining when our lives have become overly colonized by economy and state, overly splinted and fragmented by the hyper-specialization of expertise, and overly alienated from the lifeworld except by appeal to value judgments that express our *felt sensibility* that things are not *well* with us. To cite Habermas: "if we do not wish to relinquish altogether standards by which a form of life might be judged to be more or less failed, deformed, unhappy, or alienated, we can look to the model of sickness and health" (*TCA I*, 73-74). But he immediately adds that the "balance among non-self-sufficient moments, [the] equilibrated interplay of the cognitive with the moral and aesthetic-practical" implied in this model cannot be derived from "the formal concept of freedom which modernity's decentered understanding of the world has left us." Unlike justice and emancipation, happiness is not directly implicated in the formal structures of the "ideal speech situation." As such, it is questionable whether critical theory ought to speculate about it. Indeed, Habermas goes so far as to suggest that the critique of alienation is something that critical theory "must refrain" from doing (*TCA II*, 383).

Of course, Habermas cannot be serious about this. He cannot abandon the critique of alienation - of the "colonization of the lifeworld" and of the "splitting of of expert cultures" - without playing into the hands of a system that encourages uncritical thinking by "preventing holistic experiences from coming into existence." So despite being rationally *un*grounded, the critique of alienation remains both desirable and possible from Habermas's perspective. Indeed, holistic orientations to collective well-being, happiness, and the good are indispensable for other reasons as well. According to Habermas, they provide the necessary complement to his deontological - specifically procedural - account of law and democracy. The rights that instantiate procedural ideals of freedom, equality, and justice are themselves only realized in the form of enforceable statutes. But the process by which

legislatures, administrators, and judges define rights in turn responds to specific harms and benefits - and broader "ethical" conceptions of public well-being - debated by average citizens.

As I noted above, debates about harms and benefits are only possible to the extent that individuals cultivate their aesthetic-ethical sensibilities. Part of this cultivation no doubt occurs in rational argumentation about judgments of taste. However, it cannot be reduced to it.[xxxv] For prior to being discussed, judgments of taste must be cultivated in aesthetic *experience*, which is partly *intuitive* and *affective.* Habermas adds that, "such an experience is used to illuminate a life-historical situation and is related to life problems, it . . . not only renews the interpretation of our needs in whose light we perceive the world," but it also "permeates as well our cognitive significations and our normative expectations and changes the manner in which all these moments refer to one another. In this respect, modern art harbors a utopia that becomes a reality to the degree that the mimetic powers sublimated in a work of art find resonance in the mimetic relations of a balanced and undistorted intersubjectivity of everyday life" (*MP*, 353).

Talk of art's "mimetic powers" finding "resonance" in everyday life once again brings us back to Foucault's aesthetic technologies of self-formation. Contrary to what one might expect from the utopian yearnings embedded in art, one cannot experience reconciliation alone. It requires an *intimate* caring for one's self *and one's consociates* in all their sensuous singularity.[xxxvi] Despite their self-referential nature, technologies of aesthetic self-formation are instruments for communicating care. So, in addition to our *metaphysical faith* in and *humanitarian hope* for a better life for all, the individualized care and responsibility we extend to *particulars others* requires a unique receptivity to our *own* "bodies and pleasures." We learn to care about ourselves from others caring about us and also from our caring about them.[xxxvii]

To conclude, the seemingly solitary judgement and *phronesis* exercised by the transgressive virtue ethicist may well complement the collective process of normative legitimation exercised by critics of ideology. Yet the difference between the former and the latter still stands - no matter how far one "enlarges" one's felt sensibilities to include others. As Nietzsche wisely observed, it is "selfish to experience one's own judgment as a universal law."[xxxviii](*GS*, 265).

And yet, in the process of interpreting that law for purposes of social criticism, how can we possibly avoid doing what Nietzsche bids us not to do? As a standard for criticizing injustice, humanity is but an empty receptacle that must be filled with our most deeply felt utopian yearnings for happiness. What we know of it is largely what we

have made of it. In the age of humanism, that sounds a bit terrifying. We have become the God that we ourselves killed – so much so that there is literally *nothing* left in our own humanity that could withstand the infinite depths of our critical reflection. Accordingly, Nietzsche's lament that he is "all too human" also expresses a joyful paean to the "overman" within him whose every affirmation of life is simultaneously an act of Promethean self-nihilation,. Likewise for Foucault, this sublime transgression of limits contains an element of the tragic. Perhaps it is this Faustian dialectic – so emblematic of the horrors of the last century - that Nietzsche had in mind when he said that we must "discover the hero no less than the fool in our passion for knowledge" (*GS*, 164). If so, then the *tragic* "hero" in our passion for *self*-knowledge must be the one who learns to embrace the most enduring and noblest of lies, namely, the illusion that there is a humanity and truth worth striving for.   And here I cite Nietzsche one last time:

> (T)he question "Why science?" leads back to the moral problem: *Why have morality at all* when life, nature, and history are "not moral"? No doubt, those who are truthful in that audacious and ultimate sense that is presupposed by the faith in science *thus affirm another world* than the world of life, nature, and history; and insofar as they affirm this "other world" - look, must they not by the same token negate its counterpart, this world, *our* world? But you will have gathered what I am driving at, namely, that it is still a *metaphysical faith* upon which our faith in science rests - that even we seekers after knowledge today, we godless anti-metaphysicians still take our fire, too, from the flame lit by a faith that is thousands of years old, that Christian faith which was also the faith of Plato, that God is the truth, that truth is *divine*. But what if this should become more and more incredible, if nothing should prove to be divine any more unless it were error, blindness, the lie - if God himself should prove to be our most enduring lie? (*GS*, 282-3).

---

[i]. M. Foucault, "The Discourse on Language" in *The Archaeology of Knowledge* (AK), trans. Rupert Swyer (New York, 1972), p. 221.

[ii].My present commentary revisits and revises an earlier commentary of mine, "Foucault and Habermas on the Subject of Reason," which appeared in the first edition of *The Cambridge Campanion to Foucault.*

[iii]. Foucault, "What Is Enlightenment," in *The Foucault Reader,* ed. Paul Rabinow, hereafter *FR*. Other works of Foucault cited in this essay include *Discipline and Punish: The Birth of the Prison,* trans. Alan Sheridan, hereafter *DP; Language, Counter-Memory, Practice: Selected Essays and Interviews by Michel Foucault,* ed. D. Bouchard, hereafter *LCP; The Order of Things: An Archaeology of the Human Sciences,*

hereafter *OT; Power/Knowledge: Selected Interviews and Other Writings 1972-1977,* ed. Colin Gordon, hereafter *PK, The History of Sexuality, Volume I: An* Introduction, trans. R. Hurley, hereafter *HS; The Use of Pleasure: The History of Sexuality, Volume II,* trans. R. Hurley, hereafter *UP; The Care of the Self: The History of Sexuality, Volume III*, trans. R. Hurley, hereafter CS; and "The Subject and Power," afterword to *Michel Foucault: Beyond Structuralism and Hermeneutics* by Hubert L. Dreyfus and Paul Rabinow, hereafter *SP*. Works of Habermas cited in this essay include "Taking Aim at the Heart of the Present," in *Foucault: A Critical Reader,* ed. David Couzens Hoy, hereafter *TAHP; The Philosophical Discourse of Modernity: Twelve Lectures,* trans. Fred Lawrence , hereafter *PDM; The Theory of Communicative Action*, 2 vols., trans. T. McCarthy (Boston: Beacon Press, 1984/87), hereafter *TCA I & TCA II*; and *Moral Consciousness and Communicative Action*, trans. C. Lenhardt and S. Nicholson (Cambridge, MA: MIT Press), hereafter *MC*; "Modernity: an Unfinished Project," trans. S. Weber, in David Ingram & Julia Simon, *Critical Theory: The Essential Readings* (New York: Paragon House, 1991), hereafter *MP*.

iv.The kind of civic humanism characteristic of the Renaissance is not at issue here, but only the modern philosophical humanism that informs classical Enlightenment and Romanticism .

v. F. Nietzsche, *The Genealogy of Morals*, trans. by F. Golffing (Garden City, 1956), 194.

vi . Ibid., p. 217.

vii. M. Horkheimer and T. Adorno, *Dialectic of Enlightenment*, trans. J. Cumming (New York, 1972).

viii. In a 1978 interview with Duccio Trombadori, Foucault duly noted that first-generation critical theorists "had tried ahead of time to assert things" that he too had been working for years to sustain, among them "the effects of power that are connected to a rationality that has been historically and geographically defined in the West." In the interview Foucault also lamented his ignorance of the School's work during his formative years (he read with difficulty some of Horkheimer's texts) and added: "If I had encountered the Frankfurt School while young, I would have been seduced to the point of doing nothing else in life but the job of commenting on them." On the less complimentary side, Foucault revealed his unhappiness with their humanism and laxness with respect to historical sources. See M. Foucault, *Remarks on Marx: Conversations with Duccio Trombadori,* trans. R. James Goldstein and James Cascaito (New York: Semiotexte, 1991), 115-29.

ix.Foucault here draws upon an earlier study, *Punishment and Social Structure* (1939), that was published by the Frankfurt School in its *Studies on Authority and Family*. Foucault notes that the authors of the study, Georg Rusche and Otto Kirchheimer "were right to see [public tortures and executions] as the effect of a system of production in which labour power, and therefore, the human body, has neither the utility nor the commercial value that are conferred upon them in an economy of an industrial type" *(DP,* 54).

x. M. Foucault, "What is Critique," in *The Political*, edited D. Ingram (Oxford: Blackwell, 2002), 199.

xi. Habermas notes that the welfare state has succeeded in containing the systemic crises of capitalism at the cost of generating new crises and pathologies at the level of the political system. To offset its legitimation crisis, caused in part by its use of public tax revenue to pursue contradictory aims - promoting economic growth and compensating for its harmful side effects - the state must discourage its citizens from taking too great an interest in governance. This is partly achieved by getting them interested in pursuing careers and families, and by defining their well-being in terms of work and consumption. It is also achieved by encouraging the belief that class conflicts no longer exist, and that the collaboration of labor and capital benefits everyone equally. Having dispensed with worries about "who gets what," government can define its mission in purely "technical" terms: ensuring long-term economic growth and prosperity for all. Obviously, this is a job for scientific and technological elites, who mustn't be held accountable to the ignorant masses. The depoliticization of the masses would "solve" the state's legitimation crisis, where it not for the fact that compensating

for the destructive side effects of economic growth requires bureaucratic interventions that repoliticize the citizenry or, as in the case of welfare law, reinforce their pathological dependency (*TCA II* 332-373).

xii. M. Foucault, "Confronting Human Rights," *Michel Foucault: Power, vol. 3: The Essential Works of Foucault, 1954-1984*, ed. James D. Faubion (New York: The New Press, 2000)., p. 474.

xiii. Habermas's critique of Foucault's cryptonormativism develops a theme first discussed by Nancy Fraser in "Foucault on Modern Power: Empirical Insights and Normative Confusions." Fredric Jameson observes a similar contradiction between the critical rhetoric of genealogical method, which encourages resistance, and the fatalistic rhetoric of a totalizing theory of power, which encourages resignation. See his "Postmodernism, or, the Cultural Logic of Late Capitalism, *"New Left Review 147* (September *1984):159.*

xiv J. Habermas, "Three Normative Models of Democracy," in *The Political*, p. 159 - hereafter *TNMD*.

xv. S. Benhabib, "The Utopian Dimension of Communicative Ethics," in Ingram and Simon, p. 397.
xvi. See J. Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. W. Rehg (Cambridge, MA: MIT Press, 1996), 311-12.

xvii. Whether Foucault's later turn toward hermeneutic sociology and the Enlightenment marks a real theoretical and methodological convergence toward Habermas's way of thinking and a radical shifts in his own thought is a matter of some dispute. In one retrospective summation of his life's work, Foucault stressed his abiding interest in the relationship between the subject and truth but acknowledged that his analysis of this relationship over the years stressed different angles: the role of the theoretical human sciences in constituting the image of man, the role of coercive practices and institutions (penology, medicine, and psychology) in normalizing behavior, and the role of ascetic practices in constituting the ethical subject (M. Foucault, "The Ethic of Care for the Self as a Practice of Freedom: An Interview with Michel Foucault on January 20, 1984," in *The Final Foucault, 1-2).* Elsewhere he said that his aim had been the creation of a history of the different modes of objectification by which human beings are made subjects: the scientific objectification of the subject in linguistics, economics, medicine, etc.; the coercive objectification of the self in exclusionary and disciplinary practices; and the self-objectification of the subject in the hermeneutics of desire (*SP*, 208). Again, in the introduction to *The Use of Pleasure,* Foucault describes these "theoretical shifts" as expanding the scope of genealogy, on the one hand, while specifying more precisely its method and goal, on the other (6, 9). For further discussion of the question of continuity in Foucault's thought, see Davidson (1986); Hoy (Introduction, 1986); Garth Gillian, "Foucault's Philosophy" in *The Final Foucault,* 34-44; and James Bernauer, "Foucault's Ecstatic Thinking" (ibid., 45-82).

xviii. Nancy Fraser submits that "Habermas's charge misses the mark" inasmuch as "Foucault is not necessarily aspiring to a total break with modern values and forms of life just because he rejects a foundationalist metainterpretation of them." Yet she goes on to say that, whenever Foucault is read as a "strategic" or "normative" *antihumanist* who rejects modern values because they either produce counter-emancipatory effects or produce emancipatory effects that are cognate with disciplinary normalization, the charge sticks. In any case, cynicism might not be the only reaction provoked by Foucault's critique of modernity. David Hoy, for one, argues that genealogy is best interpreted as a form of immanent social criticism: "Foucault paints the picture of a totally normalized society, not because he believes our present society to be one, but because he hopes we will find the picture threatening" (Hoy, *14*). See also "Foucault: A 'Young Conservative'?" in Nancy Fraser, *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, *1989):52*

xix. M. Foucault, "Sexuality and Solitude," in *Michel Foucault: Ethics, Subjectivity, and Truth: Vol. 1, The Essential Works of Foucault*, edited P. Rabinow (New York, The New Press, 1997): 177.

xx.M. Foucault, "The Ethic of Care for the Self as a Practice of Freedom: An Interview with Michel Foucault on January 20, 1984," in *The Final Foucault*, 18.

xxi. J. Habermas, "Hannah Arendt's Communicative Concept of Power," *Social Research* 44 (1977), and *TCA II*, 153-97.

xxii. J. Habermas, "A Reply," in *Communicative Action*, edited Axel Honneth and Hans Joas (Cambridge: MIT Press, 1991), 239.

xxiii. According to Habermas, one must distinguish normative expectations accompanying the acceptance of *meaningful* utterances (illocutionary force in the broad sense) from normative expectations accompanying the acceptance of *morally binding* obligations (illocutionary force in the narrow sense). Even borderline cases involving *immoral* demands, such as a bankrobber's "Hands up!", accord with *norms* of correct speech *as a condition for their being successfully understood.* However, since the conditions of pragmatic (illocutionary) meaningfulness *ultimately* include the conditions for successful interaction as well (illocutionary meaning broadly construed), Habermas says that the bankrobber's demand remains *parasitic* on the structure of mutual moral obligation inherent in voluntary speech action. As we shall see, Habermas's characterization of the rules of discourse as a "fact of reason" perfectly illustrates the sense in which a generalized, *customary* practice of communicative action *within the historical context of Western rationalized culture and society* also assumes the status of a normatively binding authority *(ibid.).*

xxiv. For a detailed discussion of Habermas's subtle analysis of the different kinds of strategic force *(Gewalt)* that accompany the use of systemic media of money and power, on the one hand, and influence and prestige, on the other, see J. Nicolas Kaufmann, "Formations discursives et dispositifs de pouvoir: Habermas critique Foucault," 41-57.

xxv. Bernauer and Rasmussen, *The Final Foucault* 3, 18-19.

xxvi. Foucault does not deny the worthiness of inquiring into the issue of *social domination* (or the question of *who* exercises power over *whom).* Rather, he chooses to address a different question: How do persons exercise power over other persons? Or better, *How* do the effects (intended and unintended) of a given action structure the field of possible responses? In contrast to the theory of power or, more specifically, the theory of domination developed by theorists in the Marxist tradition, such as Steven Lukes and Habermas, Foucault's "analytic of power" does not conceptualize power as something that certain subjects possess and consciously exercise in the repression of others. Although the *critical rhetoric* that accompanies Foucault's own analysis of power *does* presuppose a normative distinction between oppressive and nonoppressive power relations, the analysis as such does not. Cf. Steven Lukes, "Power and Structure," in his *Essays in Social Theory* (Columbia University Press, *1977*). For a defense of Foucault's structuralist account of power against the charge of fatalism leveled by Lukes, see David Hoy, "Power, Repression, Progress: Foucault, Lukes and the Frankfurt School" in *Foucault: A Critical Reader,* ed. Hoy, *123-47*.

xxvii. "Reply," 254-59. For Habermas, actors resort to communicative action *precisely in order to coordinate the pursuit of personal aims.* Here, however, the orientation toward personal success is subordinated to the orientation toward reaching mutual agreement. Stated differently, the ideal constraints of communicative reciprocity are superimposed over the real, empirical constraints that impinge at the level of mundane purposes. Only when strategic and communicative orientations are pursued on the same level, as it were, does contradiction occur. But Habermas also recognizes that there are borderline cases, such as the hortatory rhetoric of the politician, that mix orientations. Here the orientation toward reaching mutual understanding is pursued reservedly, at best (291, n. 63). In this regard it bears noting that Habermas by no means neglects the subordination

of strategic speech acts to communicative aims that occurs whenever one "gives another to understand something" indirectly. The opening up and preservation of communicative interaction often depends on such non-verbalized *perlocutionary* effects. The unannounced power, or indirect influence, that stems from the (relatively independent) meaning of the speech act and/or its context of deployment cannot be conceived merely as a strategic accretion in the narrow sense, as Habermas once thought. Rather, it constitutes, as he himself now realizes, an indirect communication in its right, one that is perhaps best captured by the very different notion of strategic action alluded to by Foucault (239ff.).

[xxviii]. Earlier in his career, Habermas himself appealed to the philosophical hermeneutics of H.-G. Gadamer, who argued that consensual dialogue can be understood as a strategic game in which the structure of play and reciprocity predominate over the subjective aim of winning. Not coincidentally, the concept of a language game was originally introduced by Wittgenstein to capture the rule-governed, consensual nature of speech. By contrast, J-F. Lyotard has recently emphasized the agonistic (or contestatory) nature of language games. Although Foucault often formulates his theory of strategic relations in confrontational terms, his remarks about preserving the freedom of the other without dominating him (see below) suggest a more Gadamerian phrasing. See H.-G. Gadamer, *Truth and Method* (Continuum, 1986), 91-119; J.-F. Lyotard, *The Postmodern Condition: A Report On Knowledge* (University of Minnesota Press, 1984), sec.5; David Ingram, "Jurgen Habermas and Hans-Georg Gadamer," *The Blackwell Guide to Continental Philosophy*, R. Solomon and D. Sherman Editors (Oxford: Blackwell, 2003), 219-42; and "The Possibility of a Communicative Ethic Reconsidered: Habermas, Gadamer, and Bourdieu On Discourse," *Man and World* 15 (1982):149-61; and "Legitimacy and the Postmodern Condition: The Political Thought of Jean-Francois Lyotard," *Praxis International* 7:3/4 (Winter 1987/ 88):284-303.

[xxix]. Hubert Dreyfus argues that abandoning the kind of theoretical holism that Quine, Davidson, Habermas, and Gadamer hold - the view that the meaning of action can be captured in terms of non-context-specific true or false beliefs - in favor of the practical holism of Heidegger's *Vorhabe,* Bourdieu's *habitus,* or Foucault's pre-discursive practices, enables us to circumvent the need for justification and along with it, the debate between relativists and universalists. However, Dreyfus's concern about theoretical holism is baseless, since it rests on a confusion, to wit: that transcendental enabling conditions like praxical and communicative competencies are like linguistic contents, which delimit meaning. Reducing different language games to limiting - as opposed to enabling - conditions forces us to conclude that they must be *radically* incommensurable, or incapable of being translated into each other. But it is precisely the "universal" and "formal" conditions underlying a universal communicative competence that enable specific contents from different languages to be translated (however imperfectly) into one another. See H. Dreyfus, "Holism and Hermeneutics," *Review of Metaphysics* 34 (1980):3-23. For a detailed argument against strong holism, see J. Bohman, *New Philosophy of Social Science* (Cambridge: MIT Press, 1991), 115ff.

[xxx].Hoy suggests that Foucault's post-modernism enables him to avoid the charge of pragmatic contradiction (or self-referential paradox) leveled against him by Habermas. As a post-modernist Foucault can both accept the inescapability of rational notions of truth and legitimacy - something the anti-modernist can't do - and deny that they can (or need) be given any transcendental or teleological justification. Habermas seems to miss this aspect of Foucault's position, classifying him as an "anti-modernist" and "young conservative" (one who yearns for the "archaic, the spontaneous powers of imagination, of experience and emotionality") who nonetheless departs from a modern concept of emancipated subjectivity. See David Hoy, "Foucault: Modern 0r Postmodern?" in *After Foucault*, 12 -4 1.

[xxxi]. See T. Flynn, "Foucault as Parrhesiast: His Last Course at the College de France (1984)," in Bernauer and Rasmussen, *The Final Foucault*, 102-18.

[xxxii]. J. Butler, "What Is Critique? An Essay On Foucault's Virtue," in *The Political*, 212-226.

[xxxiii]. Habermas compares Foucault's appeal to a different economy of bodies and pleasures to Georges Bataille's appeal to the heterogeneous and Peter Sloterdijk's to the Cynics' bodily-expressive forms of protest, both of which are similar to the *parrhesiast's* truth-telling. The comparison with Bataille seems weak. Bataille's appeal to "sovereignty" actually resonates with Marcuse's critique of repressive desublimation, in that both envisage an estheticization of the body and pleasure free of the constraints of genital sexuality. But as Habermas elsewhere acknowledges, Foucault himself never tired of rejecting the notion that there existed a "primordial vitality" (or "purity of desire") beneath sexual prohibitions. See B.-H. Levy, "Power and Sex: An Interview with Michel Foucault," *Telos* 32 (1977):158; Herbert Marcuse, *One Dimensional Man*: *Studies* in *the Ideology of Advanced Industrial Society* (Boston: Beacon, 1964), 56-83; and P. Sloterdijk, *Kritik der zynischen Vernunft*, 2 vols. (Frankfurt, 1982). For a critique 0f Foucault's appeal to "a posthumanist political rhetoric of body language" see Nancy Fraser, "Foucault's Body Language: A Posthumanist Political Rhetoric?" in *Unruly Practices*, 55-66.

[xxxiv]. Cf. *TCA II*, 40ff and 57ff., where Habermas appeals to Mead's account of the relationship between "me" and "I" to explain the complementarity of moral individuation and autonomy, 0n the one hand, and esthetic selfrealization and creativity, on the other.

[xxxv]. Foucault's defenders seem to have misunderstood the thrust of Habermas's discourse ethic and its appeal to unconstrained consensus. Dreyfus and Rabinow, for example, argue that Habermas's advocacy of enlightenment requires replacing *phronesis,* rhetoric, and art with rational communication that has been purged of all strategic power relations - a position that is clearly contrary to his position as I have laid it out here. On a somewhat different point, it seems too facile to say, as Habermas and McCarthy do, that Foucault ended up embracing the aesthetic side of the enlightenment in opposition to the cognitive and moral sides. See McCarthy (1990):463; Dreyfus and Rabinow, "What Is Maturity? Habermas and Foucault on 'What Is Enlightenment?' " in Hoy, 119-21; J. Habermas, *Moral Consciousness and Communicative Action,* trans. Christian Lenhardt and Shierry Weber Nicholsen (Cambridge: MIT Press, 1990 - hereafter *MC),* 98,133, 175, 195ff; and my "Completing the Project of Enlightenment: Habermas on Aesthetic Rationality," *New German Critique* 53 (Spring/Summer 1991):67-103; and *Habermas and the Dialectic of Reason* (Yale University Press, 1987), 39, 101, 131, 172.

[xxxvi]. Cf. Habermas's response to Kohlberg and Gilligan in "Justice and Solidarity: On the Discussion Concerning Stage," *The Philosophical Forum*, vol. XXI, nos. 1-2 (Fall-Winter 1989-90), p. 47.

[xxxvii]. Cf. Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982). Does a virtue ethic of care and a deontological ethic of justice designate opposed methods of moral deliberation? Or do they designate complementary aspects of a more inclusive and complete account of moral deliberation? I incline toward this latter alternative, and I think Habermas does too. Habermas proposes a two-step process of moral deliberation involving the *justification* of norms followed by their contextual *application*. Both steps involve real or simulated dialogue incorporating the perspectives of generalized and concrete other. This position seems to resonate with Gilligan's own views. For, although she distinguishes between social concern and intimate caring (p. 155), she shares Habermas's opinion that communicative openness is basic to both (pp. 29-30). In this context see Seyla Benhabib, "The Utopian Dimension in Communicative Ethics," in *Critical Theory: The Essential Readings;* Habermas's response to Gilligan in *MC*:175-82, and my discussion of Gilligan, Benhabib, and Habermas in *Critical Theory and Philosophy*, pp. 207-11.

[xxxviii]. F. Nietzsche, *The Gay Science*, trans. W. Kaufmann (New York: Vintage, 1974), 64; hereafter *GS.*