

BEYOND A CRITIC OF HUMAN RIGHTS:
FOUCAULT IN BRAZIL¹

Can Michel Foucault be considered a philosopher or a historian? It is very difficult to answer this question, above all because Foucault's thought escapes the technical compartmentalization of thought into specialties – its institutional fossilization into scientific or university disciplines, for example – that reproduce, on the intellectual plane, the technical division of work in global administration societies. Foucault was always a nomadic thinker. In his defiant words, “Do not ask who I am and do not ask me to remain the same: leave it to our bureaucrats and our police to see that our papers are in order.”²

If Foucault's work can be brought close to philosophy, it can only be done so, then, as a permanent interrogation, as an exercise in irony, or as a distancing from oneself, a displacement, an alternation of the sight, a skin shedding, an objectivity reached from the multiplication of angles and perspectives. For example, such an interrogation would involve seeing the present from that which is its other: from classical antiquity, from the Greeks, from the Romans, or from the beginning of Christianity. For philosophy is, for Foucault, a diagnosis of the present, an ontology of ourselves, which can only be effectuated through the contrast with its other, in the dispersion produced by historical sense, in an archeo-genealogy that reconstructs the historically diverse modalities of the constitu-

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tion of a consciousness of oneself. As Foucault explained in an interview from 1967:

It is very possible that what I have done has to do with philosophy, especially inasmuch as, at least since Nietzsche, philosophy has as a task diagnosing, and no longer one of trying to state a truth that can be valid for all and for all times. I seek precisely to diagnose, to realize a diagnosis of the present: to say what we are today. Excavation work beneath our feet characterizes, since Nietzsche, contemporary thought, and, in this sense, I can declare myself a philosopher.³

In other words, philosophy amounts to an essay and straying, a traverse and experiment. It involves knowledge as passion and an unreserved opening, a relation that transforms oneself on the plane of thought. Foucault affirmed this view of philosophy toward the end of his life. In his words, “The ‘essay’ – which should be understood as the assay or test by which, in the game of truth, one undergoes changes, and not as a simplistic appropriation of others for the purpose of communication – is the living substance of philosophy.”⁴

Foucault’s work bears a filiation with traditions springing from the Enlightenment. He made the connection to the Enlightenment explicit when, close to the end of his life, he reflected on Immanuel Kant’s critical program. The relation between *Aufklärung* and revolution has its widest formulation in Foucault’s analyses of governmentalization, which delve into European society’s obsessive preoccupation, since the 16th century, with the problem of governing populations. In the search for ways of governing, Foucault detects a counter move-

ment aligned in an opposite direction. He describes it as a critical attitude. It does not exactly have the form of a theory. It constitutes more of an *ethos*: how not to be governed. Therefore, against the governmentalization movement, which is a shepherding technology for directing conduct, the West has also developed a critical attitude. Kant's thought offers the philosophical expression of this attitude:

Our age is, in especial degree, the age of criticism, and to criticism everything must submit. Religion through its sanctity, and law-giving through its majesty, may seek to exempt themselves from it. But they then awaken just suspicion, and cannot claim the sincere respect which reason accords only to that which has been able to sustain the test of free and open examination.⁵

Foucault's thought continues the tradition captured in these words.

It is in this sense that it is possible to realize the relevance of Foucault's contributions to contemporary ethical-political debates. His genealogy pierces the appearance of human rights and the fundamental guarantees consecrated in the rights declarations of modern democratic states as strictly contemporary to the biopolitical management of life. These rights and guarantees are correlative to the insertion of life into the mechanisms and calculations of political power. These phenomena may be considered the obverse and reverse, or two faces of the same coin, which configures the historical form of modern nation-states and constitutes an indispensable element in the development of capitalism. These two faces may also be com-

prehended as indefectible poles in the power-knowledge relation: the pole of the exercise of power and the pole of resistance to it. If this correlation of events makes sense, then one cannot but recognize that it testifies to the twofold character of historically relevant phenomena. It also brings to light the connection of central elements operating inside the power-knowledge *dispositif* particular to political modernity. What the present work aims to show is that the figure of political sovereignty is also linked to *Aufklärung* and the rise of the human sciences.

If it is undeniable that, above all as an effect of the Second World War, conventions and declarations of human rights multiplied in supranational organizations to the point of undermining the bond between human rights and the nation-state, it is also true that the connection suggested above is historically undeniable. And it is also the case that the concept of “man” to which the international human rights movement refers under the aegis of public international right still remains essentially the same as the one in *Aufklärung*. These reminders give way to the formulation of the present work’s core hypothesis: the modern concept of man, which corresponds to the declarations of fundamental rights, illustrates the Foucauldian theoretical theme of the historicity of the universal. Such a concept acquires its full configuration inside a picture of events in which integration defines the profile of man as a universal subject, which to this day we know as “Western man.” The hypothesis is, therefore, that “universal-man,” the subject of fundamental inalienable rights peculiar to modern constitutional states is the product of a *dispositif* understood as a “thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures,

scientific statements, philosophical, moral and philanthropic propositions – in short, the said as much as the unsaid.”⁶

As is well-known, the axis of the Enlightenment’s theoretical and ethical-political program was the material promotion and moral elevation of man by means of the free use of reason, particularly scientific rationality, in its modern and experimental form. Emancipated from the tutelage and vassalage ensured by ignorance and superstition, humanity would find in the sciences and the techniques springing from them the conditions to successfully solve the most important human problems in order to guarantee its dominion over the forces of nature and achieve justice in the relations between men. So, the progress of humankind would be the result of an inseparable combination of the development of theoretical knowledge and the techno-programmatic appropriation of nature, on the one hand, and its usage for the benefit of the ethical-moral dimension of human nature, on the other.

In this triumphalist utopia, which celebrates the merry nuptial between an emancipated human understanding and the “nature of things,” Foucault detects the biopolitical investment of bodies and populations by disciplines and social insurance regulations, respectively. This investment serves as the provenance and emergence of the typically modern historical figure of subjectivity: that of the subject/subjected man who appears in history along with the advent of the human sciences. He is a subject insofar as he possesses a rationality that affirms itself in and through the human sciences. He is subjected insofar as, in this same movement, the subject of knowledge also becomes the field of incidence – the *objet* – of games of truth and power practices, objectified and reified into relations of knowledge

and subjection. Man, in the form of the generic subject's universal, such as is still imposed on us today, reveals itself, therefore, as a historical figure. Deleuze already recognized the inescapable historicity of the universal when referring to the Foucauldian thesis of the "modern invention of man." He wrote, "From classical age to modernity, we go from a state where man does not yet exist to a state from which man has already disappeared."⁷

In this context, it is helpful to recall the polemical passage from *The Order of Things* about the recent dating of man in Western culture:

As the archaeology of our thought easily shows, man is an invention of recent date. And one perhaps nearing its end.

If those arrangements were to disappear as they appeared, if some event of which we can at the moment do no more than sense the possibility – without knowing either what its form will be or what it promises – were to cause them to crumble, as the ground of Classical thought did, at the end of the eighteenth century, then one can certainly wager that man would be erased, like a face drawn in sand at the edge of the sea.⁸

In this manner, Foucault registered the historicity of universal "man" as an intricate problem presented to knowledge. For him, man's figure arises amidst all the mutations that affect knowledge and its order, in the passage from the classical era to modernity. It arises from an analytic of finitude that considers man as the referential pole of all the positivity to which the

faculty of representations has access: for there can only be representation (therefore, opening to the world) if something that presents itself as real is *given* to a subject, a subject that, in these conditions, cannot but be finite.

Besides, man arises in the open space between the transcendental and the empirical (because the figure of man constitutes a possible object for science and a subject whose synthetic activity produces every representation, including scientific ones). Man finds a reflection surface in the permanent relation between the cogito and the unthought-of – an opening in which three domains of knowledge proper to modernity are inscribed: biology, philology, and political economy. And it is from these fields that psychology, sociology, linguistics, and anthropology will take root.

But Foucault's importance is impoverished and even banalized if we freeze him in the unilateral figure of the "critic of human rights." Foucault, the name of many masks, is plural and much more complex than what those who oppose him think he is. This same critic of modern humanism was an uncompromising combatant for human rights. Militancy for Foucault entailed inseparable relations between life and thought, the best expression of which is his Collège de France course from 1983 to 1984, *The Courage of Truth*.⁹ His militancy with regard to human rights finds an unparalleled expression in his experiences in Brazil, which is the reason I now want to look back at these experiences.

In the beginning of October 1975, Foucault arrived once again in São Paulo. There, he delivered a series of lectures on the history of sexuality at the School of Philosophy, Literature,

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and Human Sciences (FFLCH) at the University of São Paulo (USP). On that occasion, Foucault got to know about a series of arbitrary arrests carried out in the country by political authorities. USP students organized a demonstration in which they denounced the violent imprisonment of teachers, students, and employees. Foucault attended the assembly and delivered a speech in support of the protest. In the speech, he announced that he would suspend his course before its scheduled conclusion. Days later, the press would announce that journalist Vladimir Herzog was found dead, supposedly hanged, in the facilities of the Second Army in São Paulo on October 25, 1975. On the day following the death, the command of the Second Army's Detachment of Information Operations and Internal Defense Operations Center (DOI-CODI) issued an official note indicating that Herzog had committed suicide in his cell. On October 27, Herzog's funeral took place and USP students staged a strike right afterwards.

Fortunately, these facts were registered in published material, meaning that I am not forced to limit myself to my personal memory of those events. Heliana de Barros Conde Rodrigues recounts that Foucault suspended his course at USP and participated in an ecumenical funeral service for Herzog on October 31.¹⁰ Years later, Foucault recalled the service in moving detail:

The Jewish community didn't dare hold a funeral service. It was the Archbishop of São Paulo, Dom Evariste [*sic*], who organized the ceremony, which was moreover inter-denominational, in memory of the journalist in the Cathedral of St Paul. It drew thousands and thousands of people into the church, on to

the square and so on, and the cardinal in red robes presided over the ceremony, and he came forward at the end of the ceremony, in front of the faithful, and he greeted them shouting: ‘Shalom, shalom.’ And there was all around the square armed police and there were plain clothes policemen in the church. The police pulled back; there was nothing the police could do against that.¹¹

Another decisive political intervention by Foucault was on behalf of the boat people. It took the form of a manifesto titled “Confronting Governments: Human Rights,” which was published in *Libération* in June 1984 days after his death.¹² The term “boat people” got to be known as the designation given to the refugees escaping from the Indochinese Peninsula, especially Vietnam, in boats and ships after the war with the United States. They were stateless people and clandestine immigrants. Worldwide outrage followed, giving birth to the International Committee against Piracy in Geneva. Foucault’s intervention at that time was with respect to pirate vessels in which around eight hundred thousand people tried to “illegally” escape southeast Asia in search of better living conditions. The boat people exposed themselves to abuse, violence, maritime storms, pirate attacks, the refusal of asylum and refuge, and ejection from waters demarcated by territorial borders. It seems to me we can find here a concrete example of what Foucault understood by a “new right.”¹³ In his words, “Amnesty International, Terre des Hommes, and Médecins du monde are initiatives that have created this new right – that of private individuals to effectively intervene in the sphere of international policy and strategy.”¹⁴ Foucault points in the direction of a law uncontaminated

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by the principle of sovereignty. This law is protected by an extraordinary international citizenship founded on the abuses of power and the unfortunate condition of the victims of such abuses, whosoever they might be. It springs from a chain of universal solidarity, founded on intolerable misfortune and dereliction.

Foucault's appeal to a "new right" has a profound resonance in our present. Large numbers of immigrants are escaping atrocities and misery in their homelands. They are agglomerating in an inhuman condition in the archipelago of the Pelagic Islands to seek refuge in Europe. They do not find the elementary humanitarian and cosmopolitan right of hospitality. The European Parliament is attempting to transform into law an initiative that establishes quotas for the acceptance of immigrants by countries in the European community. In this context, Foucault's appeal to a "new right" seems to take on a greater urgency. It is therefore especially regrettable that the Board of Governors of the São Paulo Foundation of the Pontifical Catholic University of São Paulo (PUC-SP) has vetoed the creation of a "Michel Foucault and the Philosophy of the Present" Chair at that university. It refused to even judge the merit of the appeal presented by the initiative's proponents.

The refusal, which unanimously contradicted the decision previously taken by the university's teaching and research commission, provoked outrage in national and international academic communities. As a matter of fact, the proposition did not aim at instituting a permanent chair for the study of Foucault's work, in and by itself, but, as the title itself indicates, the competent and rigorous study of the history of contempo-

rary philosophy, which, incidentally, has been a tradition at PUC-SP.

In conclusion, it is worth recalling that Foucault's lecture series "Truth and Juridical Forms" was delivered at the Pontifical Catholic University of Rio de Janeiro (PUC-Rio) in 1973. That year, PUC-Rio published Roberto Machado and Eduardo Jardim Morais's translation of the lecture series in something of a textbook. In 1996, PUC-Rio and the Nau publishing house re-edited it. It is also worth remembering that the philosophy center of the Instituto Sedes Sapientiae in São Paulo has Foucault's work as one of its main references. These facts may well contribute to a reconsideration of the decision to veto the creation of a "Michel Foucault and the Philosophy of the Present" chair at PUC-SP.

NOTES

- 1 Unless otherwise indicated, all translations are my own.
- 2 Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York: Pantheon Books, 1972), 17.
- 3 Michel Foucault, "'Qui êtes-vous professeur Foucault?'" in *Dits et écrits 1954-1988*, Vol. 1, 1954-1975, ed. Daniel Defert and François Ewald with the assistance of Jacques Lagrange (Paris: Quarto/Gallimard, 2001), 654.
- 4 Michel Foucault, *The Use of Pleasure: Volume 2 of The History of Sexuality*, trans. Robert Hurley (New York: Vintage Books, 1990), 9.
- 5 Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith, unabridged edition (New York: St. Martin's Press, 1965), 9.
- 6 Michel Foucault, "The Confessions of the Flesh," in *Power/Knowledge: Selected Writings and Other Writings, 1972-1977*, ed. Colin Gordon,

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- trans. Colin Gordon, Leo Marshall, John Mepham, and Kate Soper, (New York: Pantheon Books, 1980), 194.
- 7 Gilles Deleuze, “L’Homme, une existence douteuse,” in *L’île déserte: Textes et entretiens 1953-1974*, ed. David Lapoujade (Paris: Les Éditions de Minuit, 2002), 128.
 - 8 Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage, 1996), 387.
 - 9 Michel Foucault, *The Courage of Truth (The Government of Self and Others II): Lectures at the Collège de France, 1983-1984*, ed. Frédéric Gros, trans. Graham Burchell (New York: Palgrave Macmillan, 2011).
 - 10 Heliana de Barros Conde Rodrigues, *Ensaio sobre Michel Foucault no Brasil: Presença, feitos, ressonâncias* (Rio de Janeiro: Lamparina, 2016), 93.
 - 11 Michel Foucault, “On Religion (1978),” in *Religion and Culture*, ed. Jeremy R. Carrette (New York: Routledge, 1999), 107.
 - 12 Michel Foucault, “Confronting Governments: Human Rights,” in *Essential Works of Foucault, 1954-1984*, ed. Paul Rabinow, vol. 3, Power, ed. James Faubion, trans. Robert Hurley et al. (New York: The New Press, 2000), 474-475.
 - 13 Ibid., 475.
 - 14 Ibid.