2019

Foucault’s Keystone: *Confessions of the Flesh* – How the Fourth and Final Volume of *The History of Sexuality* Completes Foucault’s Critique of Modern Western Societies

Bernard E. Harcourt
*Columbia Law School, bharcourt@law.columbia.edu*

Follow this and additional works at: [https://scholarship.law.columbia.edu/faculty_scholarship](https://scholarship.law.columbia.edu/faculty_scholarship)

Part of the Gender and Sexuality Commons, Public Law and Legal Theory Commons, and the Sexuality and the Law Commons

**Recommended Citation**


Available at: [https://scholarship.law.columbia.edu/faculty_scholarship/2592](https://scholarship.law.columbia.edu/faculty_scholarship/2592)

This Working Paper is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact cls2184@columbia.edu.
Foucault’s Keystone: *Conessions of the Flesh*

How the Fourth and Final Volume of *The History of Sexuality* Completes Foucault’s Critique of Modern Western Societies

Bernard E. Harcourt
Columbia University/EHESS

Paper prepared for presentation at the Harvard Colloquium for Intellectual History: “Conessions of the Flesh: Michel Foucault’s Final Volume of *The History of Sexuality,*” at the Minda de Gunzburg Center for European Studies at Harvard University on Thursday, December 5, 2019.

Draft dated November 30, 2019
FOUCAULT’S KEYSSTONE: CONFESSIONS OF THE FLESH

HOW THE FOURTH AND FINAL VOLUME OF THE HISTORY OF SEXUALITY COMPLETES FOUCAULT’S CRITIQUE OF MODERN WESTERN SOCIETIES

BERNARD E. HARcourt

In the final pages of the now-final volume of The History of Sexuality, Volume 4: Les aveux de la chair ("Confessions of the Flesh"), Foucault’s intellectual project comes full circle and achieves its long-awaited completion. In those final pages, dedicated to Augustine’s treatment of marital sexual relations, Foucault reveals the heretofore missing link that now binds his ancient history of sexual relations to his critique of contemporary forms of governing: Foucault discovers in Augustine’s writings the moment of the birth of the modern legal subject and of the juridification of social relations. Foucault identifies the moment when, in Western Christian societies, the mechanisms of social ordering in the single-most fraught domain of human interaction (namely, sexual relations) gave rise to what Foucault calls “the subject of law” (« le sujet de droit ») and which he describes as the modern rights-bearing and responsible individual inscribed in a legal framework of accountability, responsibility, and autonomy. Like the final piece of a jigsaw puzzle, the appearance of the modern legal subject completes Foucault’s critical project. It now allows us to fold the entire four-volume series of The History of Sexuality back into his critique of contemporary forms of neoliberal governance. With Les aveux de la chair, the genetic make-up of the modern legal subject is decoded; it is now possible to wrap the history of subject creation from antiquity to the patristic era back into Foucault’s critique of contemporary modes of social ordering in the neoliberal age.

With that missing piece now firmly in place in a published book—and it is of the utmost importance to distinguish his books, all ten of them now, from his other productions, whether lectures, conferences, essays, or interviews—it is finally possible to fully articulate Foucault’s critique of our contemporary neoliberal forms of governing in the full three-dimensionality that Foucault had promised (the three-dimensionality of savoir-pouvoir-sujet, of knowledge, power, and subjectivity, or, as others had proposed earlier, of epistemology, politics, and ethics). Foucault’s critique of his times, with special reference to the highly influential ideas of American neoliberalism at the turn of the 1980s especially as expressed in the writings of the Chicago School, can now be articulated as follows:

The modern legal subject—le sujet de droit—begins to appear in Augustine’s emphasis on consent, will, responsibility, accountability, and autonomy in the context of marital sexual relations in his writings such as De bono conjugali and De nuptis et concupiscencia. The legal subject, who is born at that time and flourishes in the modern political theory of sovereignty of the

* Columbia University, New York; École des hautes études en sciences sociales, Paris.

Electronic copy available at: https://ssrn.com/abstract=3497030
sixteenth and seventeenth centuries, often discussed under the rubric of “reason of state” or *raison d’État*, ends up placing certain limits on sovereign power and gives rise to ideas of checks and balances, of divided power, of limits on governing, and ultimately to the paradigm of mid-twentieth-century liberal democracy.

As against that regime of liberal democratic governance, there emerges a competing figure of *homo economicus*, first in the work of the Physiocrats and liberal economists of the eighteenth century, but then in more concentrated form in the writings of neoliberal economists after the war. As the experience, practices, and very subjectivity of *homo economicus* begins to supplant that of the modern legal subject, the modern economic subject gradually deposes and delegitimizes the state in a far more radical way. It strips the state of all possible knowledge, rendering government entirely impotent: It is only the neoliberal subject who can know his own interests; the government and the collectivity, by contrast, have no access and no way to know any individual subject’s self-interest. As a result, the collectivity is stripped of all knowledge, is ignorant and helpless. Whereas the modern legal subject only placed limits on the state, *homo economicus* now divests the state of all knowledge and legitimacy, and thereby does away with it entirely.

But—and this is the locus of Foucault’s critique—the premise that *homo economicus* knows his self-interest best and that the collectivity or the government is ignorant on this score, is itself simply an assumption. It is an unfounded belief, a mere assertion of truth. It is, however, baked into the theory of neoclassical economics, from François Quesnay and Adam Smith to Friedrich Hayek and Gary Becker. As a result, the entire framework of neoliberal governance rests on an illusion, a sleight of hand: all of the outcomes, whether practices or institutions, are essentially baked into the cake via the initial imagination of an all-knowing *homo economicus*.

*Les aveux de la chair* provides the missing piece to Foucault’s critique by tracing the transformation from the subject of lust of early Christian thought into the modern legal subject of limited sovereignty through Augustine’s writings on consent and responsibility in marital sexual relations. As Foucault writes, “Le consentement—et c’est la raison du rôle central qu’il joue chez Augustin et qu’il jouera plus tard—permet d’assigner le sujet de concupiscence comme sujet de droit.”¹ This appearance of the modern legal subject in Augustine’s theoretical edifice is what makes possible the following transformation from the subject of law to the *homo economicus* of neoclassical economic and neoliberal thought—the subjectivity that then strips the collectivity of all knowledge and legitimacy.

As Foucault emphasized in 1979 in his lectures on *The Birth of Biopolitics*, in order to understand the contemporary moment, the neoliberal economic subject has to be distinguished from the modern subject of law. As he explained there, the distinction is key: “*homo economicus* et sujet de droit n’étaient donc pas superposables.”² “In the eighteenth century,” Foucault emphasized, “the figure of *homo economicus* and the figure of what we would call *homo juridicus* or *homo legalis* are absolutely heterogeneous and cannot be superimposed on each other.”³ But to understand *homo
aconomicus, Foucault had to trace the history of subjectivity—what he called “the history of desiring man,” what we might rename the history of the desiring subject—from ancient Greece, through the Greco-Roman philosophers and practices of the first centuries, to the patristic period and Augustine, in order to discover the birth and genetic make-up of the modern legal subject. Les aveux de la chair, in this sense, lays the final stone, the keystone, in the full arc of Foucault’s critique.

When Foucault originally cut into his examination of biopolitical forms of power in the first volume of The History of Sexuality in 1976, Foucault was openly dissatisfied with the explanatory force of disciplinary power and panopticism which he had set forth a year earlier in his magnum opus Discipline and Punish. Neither the model of political sovereignty, which Foucault neatly encapsulated in the formulation “to take life or let live,” nor the paradigm of surveillance, discipline, and of the punitive society seemed adequate to the task of critiquing the emerging, softer forms of social governance and management associated with the budding neoliberalism of the 1970s—reflected, for instance, in the election in France of President Valéry Giscard d’Estaing in 1974. Foucault sketched in Volume 1: The Will to Know the contours of the biopolitical form of power, famously reversing that earlier formulation to read “to make live or let die” and focusing on the management of populations rather than the discipline of individuals. At that time in 1976, Foucault outlined how his analysis would proceed, listing on the back cover the five volumes that would appear next: La chair et le corps; La croisade des enfants; La femme, la mère et l’hystérique; Les pervers; and Population et races. Those five books were intended to trace how the experience of what was called “sexuality” since the nineteenth century came into being and how it shaped the modern subject.†

The aim, all along, was to explore the regulation of sexual relations—one of the richest domains of moralization in human history— in order to better understand and critique the present “modern Western societies,” in Foucault’s words. In other words, to better understand biopolitical power. But this, Foucault realized, required first better understanding liberalism and neoliberalism. Foucault explained this well to his audience at the Collège de France on January 10, 1979, in his lectures on The Birth of Biopolitics. As he indicated, he had intended to focus those lectures on the core question of biopolitics, but needed to first understand the modern legal subject and neoliberalism:

I thought I could do a course on biopolitics this year, but it seems to me that the analysis of biopolitics can only get under way when we have understood the general regime of this governmental reason I have talked about […] Consequently, it seems to me that it is only when we understand what is at stake in this regime of liberalism opposed to raison

---

* Draft manuscript versions of the first two are now in the Fonds Foucault at the Bibliothèque nationale de France. See “Avertissement” of Frédéric Gros, Les aveux de la chair, i.
† The concept of “experience” is central to Foucault’s project and, as Henri-Paul Fruchaud has highlighted, traces back to Foucault’s work on Binswanger. As Fruchaud reminds us, Foucault wrote in a draft “Preface” originally destined for the English translation of The Use of Pleasure, that his thoughts on experience related back to his work on Binswanger. This important reference will be discussed in the critical apparatus of the forthcoming publication of Foucault’s manuscript on Binswanger, which was written shortly after his Introduction to Binswanger’s Rêve et existence, published in 1954. See forthcoming volume in Cours et travaux avant le Collège de France, due out in April 2020.
d’État … only when we know what this governmental regime called liberalism was, will we be able to grasp what biopolitics is.⁶

A couple of months later, Foucault gave, as the title for the following year’s Collège de France lectures, On the Government of the Living, reflecting his intention to continue his work on biopolitics as a form of governing.⁷ However, just as his lectures on The Birth of Biopolitics did not return directly to biopolitics but focused instead on neoliberal discourse in France, the history of Ordoliberalism in Germany, and American neoliberal thought, Foucault’s development in 1980 in On the Government of the Living did not centrally engage biopolitics but instead went further back in history to an earlier archive—namely Sophocles, the Stoics, and the early Christian pastoral—in order to reexamine the genealogy of our contemporary neoliberal forms of rationality.

Whereas earlier, Foucault had eschewed the ancients as a source of governmental reasoning, on his return to Œdipus Rex and the early Greco-Roman philosophers, he located there the origins of a genealogy of the modern subject. Earlier, on February 8, 1978, in his lectures Security, Territory, Population, after discussing Œdipus Rex, Foucault observes that: “I do not think that the idea that one could govern men, or that one did govern men, was a Greek idea. If I have the time and courage I will come back to this problem, either at the end of these lectures or in the next series of lectures…”⁸ This is precisely where Foucault leaves off in 1978, but where he picks up in the 1980 lectures On the Government of the Living. Those lectures represent both a return to the question and a corrective, in which he casts doubt on his earlier statement about Greek antiquity.

Drafting La chair et le corps—the intended second volume on Christian conceptions of sexual relations after the Lateran Council and the one that would have been closest to Les aveux de la chair⁹—Foucault experienced the need to refine his theory of subject creation and reach further back in history. He did so publicly in his first four lectures of On the Government of the Living, reinterpreting Œdipus Rex through the lens of truth-telling and the manifestation of self and providing, in effect, a curative to his previous claims about the lack of any arts of governing in ancient Greece. This launches his investigation into the pre-Christian East, and had the effect of moving the genealogy of the modern subject back, of opening new vistas, and of reorienting the project from the couple knowledge-power to the trinity knowledge-power-subject. This reorientation led Foucault to study the avowal, the examination of conscience, the direction of others, forms of truth-telling—in sum, the work on subjectivity and subject creation that would first constitute his lectures at Louvain in 1981, Wrong-Doing, Truth-Telling: The Function of Avowal in Justice, and, working a substantially similar archive as in Louvain, the second, third, and now fourth and final published volumes of The History of Sexuality. Interestingly, the sequencing of the return to ancient Greece is reflected as well in the drafting of the three final volumes of The History of Sexuality: Foucault began with Volume 4, writing it sometime between 1980 and 1982, and put it aside after having sent the manuscript to Gallimard in the Fall of 1982; he then proceeded to draft Volumes 2 and 3 (which were intended to be one volume on the ancients) and published them in April and May 1984, shortly before his untimely death in June of that year.

It is in this sense that Les aveux de la chair provides the missing jigsaw piece in the now-published book series—the emergence of the modern legal subject—that
completes the overall argument and does so, as I mentioned earlier, in the full three-dimensionality of knowledge-power-subjectivity to which Foucault aspired. Foucault did not, however, have the time, given his illness, to reframe Volume 4. Precisely for this reason, the publication of Les aveux de la chair prefigures what I consider to be the single-most important task that Foucault left us, namely: to reintegrate the work on subjectivity back into the framework of knowledge-power-subject. That is the task that, I have argued, was cut short by Foucault’s untimely death; but I believe that the fourth volume of The History of Sexuality gives us a blueprint of how to complete that final task: it shows us how to fold back the study of subject creation and subjectification into the knowledge-power-subject framework.

Now, I suspect strongly that Foucault would have performed this integrative work in the process of editing the manuscript of Les aveux de la chair for final publication.¹⁶ I believe this integrative work would have formed the crux of a conclusion to the volume, which is clearly missing, at least on my reading.¹¹ Foucault did not have the opportunity, because of his untimely death; what we are reading is the manuscript draft that reflects his thinking in about 1980-82, at the time that he returned to the Ancients.¹² But with the appearance of the modern legal subject at the tail end of Volume 4, I trust Foucault would have done the work of folding his history of the desiring subject into his critique of modern Western societies. The very publication of the volume now, thirty-four years later, reveals the path forward—and in that alone, is a remarkable contribution to contemporary critical theory.

Many readers of Foucault have complained that the turn to subjectivity, to care of the self, and to truth-telling at the end of Foucault’s intellectual journey undermines the political force of his philosophy and has pushed contemporary critical thought into a complacent apolitical direction. Ella Myers argues, for instance, in her book, Worldly Ethics: Democratic Politics and Care for the World (Duke 2013),¹³ that Foucault’s turn in the early 1980s away from the study of power and toward the practices of the self is ultimately depoliticizing and undemocratic.

Les aveux de la chair should dispel that argument and open the way to integrate those two projects—knowledge-power and subjectivity. As Foucault underscored in the section titled “Modifications” in the introduction to The Usage of Pleasure when he resumed publication of The History of Sexuality in 1984—a section that represents, I believe, one of the single-most important passages of his writings post-Discipline and Punish—the turn to subjectivity in Volumes 2, 3, and now 4, had to be understood as a complement to the analysis of knowledge-power. Foucault’s critical project, as he emphasized there, was three-dimensional and involved, in his own words, first “the formation of sciences (savoirs),” second “the systems of power,” and third “the forms within which individuals are able, are obliged, to recognize themselves as subjects.”¹⁴ Foucault observed that his previous research on the archeology of knowledge and the genealogy of power served well to study the first two dimensions;¹⁵ but that he was behind in elaborating the third dimension, namely subjectivity.¹⁶ And whereas the study of knowledge had required a first shift in the critical method toward archeology, and the study of power had required a second shift in the critical method toward genealogy, to get at the third dimension of his project, Foucault needed to make another shift in his approach to study the history of the desiring subject.¹⁷ The reason being that we
intuitively tend to take desire as static, constant, essential, atemporal, almost universal—as if subjects have always had the same sexual desire—whereas, as Foucault suggested, desire must be studied genealogically, a task that he described as both historical and critical, « un travail historique et critique ». The critical dimension is key. It is the critical historical study of the subject of desire that would call for « toute l’étude autour de la lente formation, pendant l’antiquité, d’une herméneutique de soi ».

It would be an impoverished reading of Les aveux de la chair—or, for that matter, of the other two volumes from 1984, or his Collège de France lectures after 1980—to view Foucault’s work on subjectivity as displacing his earlier problematization of knowledge-power. It does not “scrap,” nor “defer his analysis of modern society,” but rather completes it. It does not represent a break from the earlier critical intervention, but a fulfillment of it. It adds a necessary dimension. Foucault expressly stated, in his last lectures in 1984 in The Courage of Truth, that it would be an impoverished reading of his theory of knowledge-power to set aside the subject: “to depict this kind of research as an attempt to reduce knowledge (savoir) to power, to make it the mask of power in structures, where there is no place for a subject, is purely and simply a caricature.”

Foucault did not need to state the inverse at that moment, but it is fully implicit in what he said: It would be an impoverished reading of Foucault’s work on subjectivity not to integrate it back into the study of knowledge and power. In this sense, it is essential to read Volumes 2, 3, and now 4 back into Volume 1. It is crucial now to integrate all three dimensions of Foucault’s thought—knowledge-power-subject—in order to understand his full critique of modern forms of governance.

With the birth of the modern legal subject in Les aveux de la chair, it is now possible to do precisely that and integrate the full History of Sexuality back into his critique of modern Western societies. As I have suggested, I believe that is what Foucault would have done in a revised introduction and conclusion to the fourth and final volume of his history—but was cut off by his illness. That is our greatest task and challenge today: to explore how we have been shaped as subjects in such a way as to implicate ourselves—both willingly and unknowingly—in the social order within which we find ourselves and that, through the interaction of knowledge-power-subjectivity, we reproduce and reestablish ourselves. With Les aveux de la chair, it is finally possible to visualize Foucault’s full research project and, now, to give it life.

---

*I leave to readers the freedom to interpret texts, but on at least one reading, this is the challenge posed by the analysis of our “expository society” in the new digital age, see Exposed (Harvard, 2015) and of the counter-insurgency warfare paradigm of governing post 9/11, see The Counterrevolution (BasicBooks, 2018). Daniele Lorenzini just sent me his text, “La politique du paradis. Foucault, Les aveux de la chair et la généalogie du néolibéralisme,” a draft chapter forthcoming in collective book on Foucault’s Confessions of the Flesh, and I believe that is what Lorenzini is doing there as well.*

Electronic copy available at: https://ssrn.com/abstract=3497030
I. A NOVEL LEGAL THEORY

A. Continuities

The fourth and final volume of The History of Sexuality prolongs Foucault’s meticulous, painstaking archival project to dissect and expose the manner in which social, cultural, religious, and ethical practices have shaped humans during different historical periods. The volume completes, chronologically, the second and third volumes, pushing the analysis from Greek antiquity and the early Common Era philosophers, to the early Christian thinkers of the first to fifth centuries. Foucault’s archive, in this fourth volume, is the discourse of those early Church scholars and ascetics, or what are called the early Christian fathers, from early Greek thinkers such as Clement of Alexandria (c. 150-215), Origen (c. 184-253), and John Chrysostom (c. 349-407), to the early Latin fathers such as Tertullian (c. 155-222), Ambrose (c. 337-397), and John Cassian (c. 360-435), through the great Church father, Saint Augustine (354-430).

We are all familiar, by now, with the broad stroke of his analysis: whereas the ancient Greeks (circa the sixth century BCE) understood sexual relations primarily through the framework of aphrodisia, a philosophical understanding that focused on the idea of an ethical self-mastery intended to prevent the subject from getting consumed by the pleasures of sexual relations and to conform them to the type of social relations between sexual actors (Volume 2, L’Usage des plaisirs, The Use of Pleasure)23; whereas the Greek and Roman philosophers of the early Common Era (circa the first two centuries CE), especially the Stoics, conceptualized sexual relations primarily through the techniques of the self, such as the examination of conscience, the memorization of rules of austerity, practices of penitence and such (Volume 3, Le Souci de soi, The Care of the Self)24; and by contrast to us moderns, who invented psychoanalytic, medical, and legal frameworks to regulate our sexuality (Volume 1, La Volonté de savoir, The Will to Know)25; the early Christian thinkers deployed the framework of lust, flesh, and sin as a way to curb and regulate sexual relations. Stuart Elden, Daniele Lorenzini, Nancy Luxon, Sverre Raffnæs, Joseph Tanke and others have laid this out elegantly in important reviews of the new volume.26

But—and this is one of the surprising discoveries in Les Aveux de la chair—the patristic tradition was far closer to the Greeks than we had previously imagined. The relation of the fathers to the ancients is far more continuous than it is to the moderns. Pace Nietzsche, Foucault dispels the idea that Christianity radically transformed the relation to sex or invented the suspicion of pleasure.27 In most respects, he proposes, it drew on the earlier writings and merely reframed the precepts of Stoic or pagan ethics. So, referring to the ancient Greek framework of aphrodisia, Foucault notes on the very first page of what would possibly have been the first chapter: “Ce même régime, sans modifications essentielles, on le trouve dans la doctrine des Pères du second siècle... Ces principes auraient en quelque sorte émigré dans la pensée et la pratique chrétiennes, a partir de milieu païens ...”.28 Or, referring to the first text analyzed, The Instructor of Clement of Alexandria, written at the end of the second century CE, Foucault underscores “une grande continuité avec les textes de la philosophie et de la morale païenne de la meme époque, ou d’une période aussitôt antérieure.”29 Throughout
Volume 4, Foucault stresses first the continuity, before then refining the analysis to uncover the subtle transformations.

B. Difference

In the course of presenting the continuities and subtle shifts, there is one transformation that eclipses all others. It is the emergence of the subject of rights and responsibilities in Augustine’s writings. It is the juridical turn in Augustine that would prefigure modernity. As Foucault explains:

Les effets et conséquences de la théorie augustinienne de la concupiscence ont été évidemment considérables. Je voudrais seulement en souligner un aspect qui concerne le gouvernement des âmes et la conduite sexuelle des époux en particulier. Il s’agit de leur « juridification » ou plutôt de la mise en place d’éléments qui permettraient de penser dans des formes de type juridique des pratiques, des règles, des prescriptions et des recommandations, qui avaient surtout été réfléchies jusqu’alors dans les formes de l’ascèse spirituelle et des techniques de purification de l’âme.30

In this regard, Les aveux de la chair offers a unique theory of law: legal norms are not imposed on humans by lawmakers or on high. Moses does not descend from the mountain with divine tablets or laws. Law is no mere form of coercion that comes from on high. No, by contrast to theories of law that imagine an imposition of legal norms, Foucault proposes that humans had to be shaped into rights-bearing subjects first and that this work was performed in the ethical and moral sphere of the regulation of sexual relations. This process of anterior subject creation, Foucault traces primarily to Augustine: it is in Augustine’s introduction of the notion of consensus, of consent, into the framework of lust in the context of marriage and marital sex, Foucault argues, that subjects begin to be thought as capable of being responsibilized and responsibilizable subjects—as subjects who can be assigned responsibility and culpability for their sexual acts through a process of self-examination of one’s relation to God. In effect, the notion of consent that emerges in Augustine is the condition of possibility of thinking of ourselves as subjects of right within a juridical framework, not only within but also beyond the domain of sexual relations.

It is here that Les aveux de la chair differs from the other set of lectures that treat the same archive, the 1981 Louvain lectures, Wrong-Doing, Truth-Telling: The Function of Avowal in Justice. But the difference is telling. The distinction helps us close in on the unique contribution of Volume 4.

The series that now constitutes The History of Sexuality practically parallels, in its breadth and scope, Foucault’s lectures Wrong-Doing, Truth-Telling. The role of avowal in Volume 4 echoes the centrality of avowal at Louvain; the breadth of history, now, with the final three volumes, comes close to that of the Louvain lectures. Both texts are centrally about law. Wrong-Doing, Truth-Telling focused on the relation between veridiction (telling truth, the diction of veritas) and jurisdiction (declaring justice, the diction of juris). Les aveux de la chair is centrally about law as well, as evidenced by the very last and weighty sentence: “ Là sont lies, par des liens que notre culture a plutôt tendus que dénoués, le sexe, la vérité et le droit.”31
But the differences between the two are worth noting, because they reveal different theories of law and the unique contribution of Volume 4. Wrong-Doing, Truth-Telling studied the avowal in order to see how the subject implicates himself in his own subjugation. In those lectures, the focus is on the relation between avowal and social order. It is on how the subject implicates himself when he tells truth in processes that produce social order. How, for instance, Antilochus implicates himself in the construction of the social hierarchy of ancient Greece through his quasi-avowal to Menelaus. In Les aveux de la chair, to be sure, the analysis also focuses on how the discourse of flesh and lust produces a truth about oneself. In this sense, The History of Sexuality is also about sexual avowal and truth. That was, recall, the original intended title of the series: Sexe et vérité. But in Les aveux de la chair, another key dimension is the relation to law and juridification. Not just, in the sense of Wrong-Doing, the relation between veridiction and juridification, but in the sense of the emergence of a modern legal subject. So what Les aveux de la chair offers, in addition to Wrong-Doing, Truth-Telling, is the genealogy of the rights-bearing individual that is the foil to neoliberal thought. It thus offers the groundwork for the critique of neoliberalism.

C. The Subject of law

Foucault’s point is not that legal proscriptions emerge only in early Christian thought. Nor that a juridical framework first arises there. Of course not. That would be preposterous. There was the Book of Deuteronomy in the Old Testament. There were proscriptions on adultery and sodomy throughout the Jewish Torah. “Let him who is without sin cast the first stone”: surely, under Hebraic law, there was already a conception of rights and duties, and of law, in the context of sexual relations. Foucault himself references throughout Les aveux de la chair, in his words, a “classic” codification—he writes of “une codification ‘classique’” that includes “les mêmes interdits (l’adultère, la débauche, la souillure des enfants, les relations entre hommes), les mêmes obligations (avoir en vue la procréation des enfants quand on se marie et quand on a des rapports sexuels), avec la même référence à la nature et à ses leçons.” Similarly, there are mentions of “law” far earlier in time in the historical analysis in Les aveux de la chair. Listen to the discussion of Clément d’Alexandrie (an early father of the end of the second century CE) in his treatise, The Instructor. Foucault writes there that, as logos, “Comme Verbe, il [the pedagogue] enseigne la loi de Dieu ; et les commandements qu’il formule sont universelle et vivante raison.” There was law before and there is law in the early Christian fathers. There are also elements of will, of volonté. Read here too the continuation of the discussion of Clément: “il faut, dans ces actions droites conformes au Logos, reconnaître une volonté unie à Dieu et au Christ.”

So Foucault’s argument, naturally, cannot be that Augustine’s discourse on lust, consent, and marriage created for the first time legal duties in the context of sexual relations. Moreover his claim also cannot be that legal prohibitions are what shaped us as subjects. Foucault had already been clear about this in L’usage des plaisirs: “c’est donner là comme solution la question elle-même ....” No, the continuous cycles of legal prohibitions do not explain how we were shaped. They are rather the product of it.

Rather, Foucault’s argument is that Augustine’s writings solidified and justified, and legitimated, the conception of humans as rights-and-responsibility-bearing subjects in
the field of sexual relations and, through its expansion, across human experience. In other words, it is only through the continual expansion of the justifiability and legitimacy of thinking of humans as legal subjects—here, through the further juridification of the field of marital sexual practices—that the modern liberal subject of rights and responsibilities, and of possessive individualism would emerge. The modern political theory of individualism—from the Lockean notion of individual rights, through MacPherson’s theory of possessive individualism, to Gary Becker’s conception of human capital—depends and derives from this expansion of the legitimate field of the juridical. Augustine is just one phase in this genealogy and evolution, but a pivotal one because of the emerging centrality of consent in sexual relations.

D. The Main Thread of Volume 4

The overarching project of Les aveux de la chair is to show that, although early Christian thought had significant continuities with Stoic practices, and although there were some differences regarding, for instance, the severity of the regulations,37 that those differences pale in comparison to the more important point that Christian thought shaped differently our relation to ourselves. The penitential discipline of the second half of the second century CE and the monastic ascetic practices of the end of the third century CE, create a whole new relation toward the self and between wrong-doing and truth. There is here a striking parallel to Wrong-Doing, Truth-Telling, and Foucault says so early on: “La pratique de la pénitence et les exercices de la vie ascétique organisent des relations entre le “mal faire” et le “dire vrai,” elle lie en faisceau les relations à soi, au mal et au vrai, sur un mode qui est sans doute beaucoup plus nouveau et beaucoup plus déterminant que tel ou tel dégré de sévérité ajouté ou retranché du code.”38

Foucault argues that the patristic tradition formed the subject around the notion of “flesh” as a mode of experience, as a mode of knowing oneself, as a way of achieving truth. It is a new mode of subjectivation: in a telling passage struck by Foucault, he writes, “La chair est un mode de subjectivation.”39 In this sense, baptism represents, for Foucault, the creation of what he calls “a certain relation between annulment of wrong-doing and manifestation of truth”40 and which he describes meticulously in the second part of Chapter 1, developing “the laborious baptism”41 and relying on the texts of Tertullian, especially De paenitentia.42 It involves rituals of interrogatories, exorcisms (placing of the hands, blowing on the face), and confession or exomologèse that constitute a new mode of subject creation.43

In early patristic thought, Foucault maintains, subjectivation takes place in novel ways. So, for instance, Foucault compares the Stoic examination of conscience, as reflected in Seneca’s essay On Anger,44 with the examinations of self in the writings of Clement, Hilary of Poitiers, or Ambrose, in order to demonstrate a shift. For Seneca, it is a question of reviewing one’s daily actions in order to remind oneself or program oneself to follow the proper rules of conduct and not to make the same mistakes again. By contrast, for Clement or Hilary, there is a different relation to the self that is mediated through God: “La connaissance de soi n’est ici, en aucune manière, un examen de conscience, ni une plongée dans les profondeurs de soi-même, il s’agit d’une ascension vers Dieu à partir de l’instance de l’âme qui peut monter vers lui.”45 And if we turn to the writings of John Cassian on early spiritual direction, we see a different set of
metaphors and pathways. Here, the Christian fathers speak of examining oneself as the miller or the money-changer might distinguish the good from the bad. The examination and direction are intended to weed good from bad thoughts, to test the purity of one’s thoughts. To determine whether the thoughts one is having are honest and faithful, or the product of deceit. The contrast between the approaches is sharp—and it is precisely the subtle transformations in the ways in which we speak truth about ourselves, reveal our truths, manifest ourselves, and in the process shape our subjectivity, that Foucault studies, in their most minute details.

But the main thread of the book concerns, within that broader arc, the emergence of the modern subject of law. At every step of the analysis in Les aveux de la chair, Foucault carefully lays the groundwork for the argument that Augustine alone juridified sexual relations. At every stage, Foucault makes sure to lay a foundation for his thesis—which reflects, I believe, the centrality of that specific argument. At every step of the way before he gets to Augustine, Foucault underscores that, even if there were earlier elements that resembled the juridical, they were not central, and that the subject of law only emerges with Augustine.

1. The Juridical Is Only A Minor Dimension of the Penitential

So, to begin with, Foucault analyses the rise of penitence in the second century CE (fully detailed in section III of Chapter 1) and emphasizes that, although there is a juridical dimension to the new penitential practices, that juridical dimension is not central. Foucault notes that there are certainly medical and juridical dimensions to penitence. Medical, in the sense that the model is often that of injuries and remedies, of the sick and the healer, with the priest taking the role of the doctor. Juridical, in the sense that the model is also often of the wrongdoer and the jury, taking place in the tribunal of truth, with the priest as judge. But despite this, and the fact that both the medical and the juridical models will increase in importance later with the penitential avowal (exagoreusis), Foucault maintains that they only have an “adjacent role.” What is really determinative is the model of martyrdom, because it is more connected to the conduct of truth, Foucault states. Foucault goes out of his way to stress that, in penitential practices, the juridical that is there is of no importance, and that there is no creation of a subject of law.

2. Juridical Not a Part of the Monastic

Foucault then provides a lengthy discussion of monastic obedience, reading John Cassian who described intimately the rules of monastic life. But here too, it is not a juridical model, rather one of absolute submission. The permanent examination and confession of the self as well—what is called exagoreusis—is not modeled on the juridical for Foucault. In fact, Foucault specifically emphasizes that it is not modeled on a juridical confession. “L'exagoreusis n'est pas comme un aveu au tribunal. Elle ne prend pas place dans un mécanisme de juridiction, elle n'est pas une manière pour celui qui a enfreint une loi de reconnaître sa responsabilité pour atténuer le châtiment.”

Electronic copy available at: https://ssrn.com/abstract=3497030
3. Not a Part of the Regulation of Virginity

The unique practice of virginity in Christianity—which both continued the pagan practices of continence, but differed in important ways—has a productive dimension, namely it contributes to the unique way of being that characterizes the Christian ethos: a special relationship “of the individual to himself, to his thought, to his soul, and to his body.” By contrast to ancient Greek notions of continence and abstinence that are merely repressive, the idea of chastity is a positive force that gives rise to the concepts of the soul and body, and relations to self.

But the technique of self-care associated with virginity does not amount to a law, Foucault stresses. It is not regulated as law; other features are more important. “Elle n’est pas une loi,” Foucault affirms. It does not form a proscription. Foucault writes:

*Elle est un mode de rapport entre Dieu et l’homme, elle marque ce moment dans l’histoire du monde et dans le mouvement du salut où Dieu et sa créature ne communiquent plus par la Loi et l’obéissance à la Loi. [...] Elle est un exercice de l’âme sur elle-même, qui la transporte jusqu’à l’immortalisation du corps. Rapport de l’âme à soi où se joue la vie sans fin du corps.*

Elsewhere, Foucault simply writes of virginity: “Choix, et non pas loi.”

Foucault develops the productivity of virginity at pages 201-202, where it becomes clear that, as a form of relation to the body—one that involves infinite labor, and the concept of labor and of the laboriousness of these practices is key—these practices ground the importance of sex in Western life. “La place centrale du sexe dans la subjectivité occidentale se marque déjà clairement dans la formation de cette mystique de la virginité.” Foucault elaborates, at pages 244-45, on the productivity of virginity, on the surveillance that it produces and the mode of subjectivation: it is the opening of a new domain, he argues, not repression. But here too, he emphasizes, it is not juridical.

4. Marriage: Consent at the Source of the Subject of Law

Foucault begins his analysis of what he calls “the arts of matrimonial life” at the end of the fourth century CE proposing a similar theoretical structure of similarities and differences—with the major difference here being that sexual relations between husband and wife are no longer viewed as primarily important for purposes of procreation. With Christianity, it is as if a whole new panel of a triptych opens up: marital sexual relations are not valued simply to have children, but to calm lust and avoid the sins of fornication. In effect, marriage is not just for procreation, but for the enjoyment of consensual sex that is not blameworthy.

But even here, in this pre-Augustinian moment, Foucault makes sure to emphasize that the juridical element associated with marriage at that time—in creating obligations and in being itself “a law” is not primordial and that what still takes precedence is the relationship to oneself. The paradigm remains the relation of self to self. As he explains, « Même dans la forme duelle du mariage, le problème fondamental est celui de ce qu’il faut faire avec sa propre concupiscence ; c’est donc le rapport de soi à soi. Et le droit interne su sexe conjugal a d’abord été organisé comme une manière de gérer à travers l’autre ce rapport fondamental de soi à soi. »
It is only with Augustine that there emerges, first, the notion of pacts or contracts, and then a jurisprudence of sexual relations that, Foucault claims, “will take considerable importance in the second half of the Middle Ages and into the eighteenth century.” Through notions of consent, free will, and lack of culpability, Augustine transforms the earlier lines of demarcation and effectively constructs a juridical model. Foucault explains:

*En centrant son analyse de la concupiscence non plus sur le problème du pur et de l’impur, de l’âme et du corps, de la matière et de l’esprit, de la passion et de la maîtrise de soi, mais sur celui du volontaire et de l’involontaire ou plus exactement de la structure même de la volonté, c’était bien dans un système de références juridiques qu’il l’inscrivait. Il entreprenait cette tâche [...] : penser le péchez comme sujet de droit ; ou, comme nous dirions dans un autre vocabulaire : penser simultanément et [en] une seule forme le sujet de désir et le sujet de droit. Les deux notions sans doute les plus importantes pour cette juridification ont été celle de consentement (consensus) et celle d’usage (usus).*

This is precisely the passage that gives rise to a juridico-physical relationship between the subject of lust and the subject of law—and the emergence of this figure of the rights-and-responsibilities-bearing individual who will play such an important role in the religious and political theories for so many centuries, through and beyond the Reformation. The central idea here is of an intertwining of the juridical and the physical, of the institutional and of the corporeal. As Foucault provocatively writes: “*On se servait d’un droit en se servant d’un corps.*”

---

**II. FOUCALUT’S CRITIQUE OF NEOLIBERALISM**

*Les aveux de la chair* thus provides the missing genealogical link to the rights-and-responsibility-bearing legal subject who represents the foil to the neoliberal economic subject. Foucault’s critique of neoliberalism hinges on that distinction.

As Foucault made clear in his lectures in 1979 on *The Birth of Biopolitics*, the central actor of neoclassical economic though and of neoliberal practice, *homo oeconomicus*, can only be understood properly in contradistinction to the subject of law. Foucault traces the emergence of the economic subject back to the writings of English empiricist philosophy from Locke onwards: the appearance of what he calls “a subject of interest” and which he defines as “a subject as the source of interest, the starting point of an interest, or the site of a mechanism of interests.” He distinguishes this emerging subject of interest from the modern legal subject of, say, Blackstone, and shows how it develops eventually into the subject of *laissez-faire* in the eighteenth and nineteenth centuries, into the subject of rational choice in the twentieth, and into the neoliberal subject at the end of the twentieth. This economic subject is directly contrasted with the subject of lust and the subject of law who emerges in the final pages of *Les aveux de la chair*. The foil animates Foucault’s argument. As he writes in 1979:
The theory of the subject in English empiricism probably represents one of the most important mutations, one of the most important theoretical transformations in Western thought since the Middle Ages.

What English empiricism introduces—let’s say, roughly, with Locke—and doubtless for the first time in Western philosophy, is a subject who is not so much defined by his freedom, or by the opposition of soul and body, or by the presence of a source or core of concupiscence marked to a greater or lesser degree by the Fall or sin, but who appears in the form of a subject of individual choices which are both irreducible and non-transferable.77

It is on the basis of that distinction that Foucault identifies the logic of neoliberal thought: What is so powerful about classical liberalism and reinforced in neoliberalism is that, by contrast to the subject of rights who can limit the power of the state, the idea of the economic subject strips the state of all knowledge. It completely disarms the state. In this sense, the theory of homo economicus outdoes the theory of the subject of law and in the process, strips the state and all collective authority of any and all legitimacy, because they have no knowledge and no possibility of knowledge.

Foucault’s central critique of neoliberalism can be located in his lecture of March 28, 1979—I refer to it elsewhere as his “third critique” because there are two others in The Birth of Biopolitics.78 This is the critique that the very ideal of a deregulated government is baked into the cake of neoliberalism because of the underlying theory of the subject in the rational actor model. In other words, the political outcomes are assumed from the get-go and inscribed in the notion of the rational, self-interested subject that founds the very approach. The original theory of the self-interested and self-knowing subject simply disqualifies the knowledge of the political sovereign or the collectivity. In other words, neoliberalism assumes from the outset a subject who alone is the knowing subject, and as a result, there is no question that the political body must ultimately be disqualified. Foucault explains this in the following passage:

Economic rationality is not only surrounded by, but founded on the unknowability of the totality of the process. Homo economicus is the one island of rationality possible within an economic process whose uncontrollable nature does not challenge, but instead founds the rationality of the atomistic behavior of homo economicus. Thus the economic world is naturally opaque and naturally non-totalizable. [...] Liberalism acquired its modern shape precisely with the formulation of this essential incompatibility between the non-totalizable multiplicity of economic subjects of interest and the totalizing unity of the juridical sovereign.

[...] Homo economics … tells the sovereign: You must not. But why must he not? You must not because you cannot. And you cannot in the sense that “you are powerless.” And why are you powerless, why can’t you? You cannot because you do not know, and you do not know because you cannot know.

[...] The basic function or role of the theory of the invisible hand is to disqualify the political sovereign.79
In effect, the epistemological assumptions regarding the economic subject are entirely responsible for the theoretical outcomes: neoliberal economic theory rests on an illusion, an unfounded belief.

I would argue that this critique of neoliberalism was confirmed during a seminar with Gary Becker and François Ewald at the University of Chicago in 2013, when Becker read and responded to Foucault’s discussion of his work and Ewald’s commentary. During the course of that seminar, when I pushed Becker on the empirical foundation for certain of his assertions, Becker spontaneously exclaimed that “I believe there’s a lot of risk of government overregulating society with too many laws, and that’s why I’ve always been a small government person.” Becker returned to this statement a few moments later, and elaborated:

It comes from a belief that the government usually makes things worse, rather than making them better, for the bulk of the population. It’s an analysis—it may be a wrong analysis, but that’s the analysis. […] When I say I’m a small government person, I am making the judgment that whatever the imperfection when the private sector operates, the effects are worse when I see the government operating. Now, other people may say that the evidence for that is not so clear, that in other sectors it is different. I recognize that. But that is what it would be based on.

That exchange with Becker instantiates Foucault’s critique. It lays bare the epistemological assumption underlying neoliberal thought—a bare, unfounded assumption—that itself produces the political outcomes favoring a purportedly limited government. (I say purportedly because the neoliberal conception of a small government is joined at the hip by a massive domestic and international police state that serves to maintain the appearance of free markets.) In any event, the notion of subjectivity assumed by neoliberal theory animates the political outcomes.

In thus completing the genealogy of the subject of concupiscence and the subject of law, Les Aveux de la chair provides the final building block necessary for the critique of Becker and American neoliberalism. Volume 4 demonstrates, in detail, how Augustine’s conception of consent in the context of marital sexual relations forms the final and formerly missing link in the chain: the modern legal subject.

**CONCLUSION**

In the seminar at Columbia University this year, Critique 13/13, we have taken on the challenge of returning to classical texts of critical theory to diagnose our contemporary crises and orient our political struggles. I would argue that the challenge with regard to Les aveux de la chair—as well as The Use of Pleasure and The Care of Self—is to fold the history of the desiring subject back into the overarching critical project, to integrate the work on subjectivity into the earlier theory of knowledge-power, in order to produce a more robust three-dimensional critique of the present. And then, perhaps even more importantly, to confront the full history of the present against our contemporary modes of praxis and resistance.
More concretely, the challenge is to better understand how we, contemporary subjects, have been shaped, understand ourselves, and experience relations of power in this current period of crises marked by hegemonic neoliberal discourse, new digital technologies, post-9/11 geopolitics, and looming climate change; and how all this interacts with and against our ongoing forms of resistance and revolt. In bridging the theory of subject creation and the earlier framework of knowledge-power, *Les aveux de la chair* offers the model of a way forward.
NOTES

Special thanks to Mia Ruyter, Daniel Defert, François Ewald, Henri-Paul Fruchaud, and Daniele Lorenzini for insightful discussions about this draft; to Annabel Kim and Julian Bourg for the invitation and for organizing the Harvard Colloquium for Intellectual History on Foucault’s *Confessions of the Flesh*; and to Fonda Shen for editorial assistance.


5 Michel Foucault, *Histoire de la sexualité 2. L’Usage des plaisirs* (Paris: Gallimard, 1984), 10; Foucault, *The Use of Pleasure*, 3-4 (“My aim was […] to analyze the theoretical and practical context with which it [that quite recent and banal notion of ‘sexuality’] has been associated. In short, it was a matter of seeing how an ‘experience’ came to be constituted in modern Western societies…”).


9 See “Avertissement” of Frédéric Gros, *Les Aveux de la chair*, iii.

10 I should emphasize, this is a speculative claim. I make it on the basis of Foucault’s full theoretical and intellectual trajectory, and not on any written indications or reports from his contemporaneous friends and associates, or from the famous chronology. The existence and placement of the material published as Annex 2 at pages 366-395 of *Les aveux de la chair* provides some corroborating evidence for this speculation, although my argument does not rest in any way on those materials but on the broadest arc of Foucault’s work. Those materials in Annex 2 include developments that Foucault expressly made in his lectures on governmentality in his Tanner lectures and in *Security, Territory, Population*—precisely the moment of integration that I am proposing; and those materials from Annex 2 were located in a folder physically located at the end of the first part of the manuscript of *Les aveux de la chair*. See “Avertissement” of Frédéric
Gros, *Les Aveux de la chair*, ix; Stuart Elden, “Review: Foucault’s *Confessions of the Flesh*,” *Theory, Culture & Society*, March 20, 2018 (discussing Annex 2 and how it “shows ever more clearly how the projects on governmentality and sexuality were mutually constitutive”). So there is corroborating evidence; but again, my argument in this paper rests on the broader theoretical and structural aspects of Foucault’s critical intellectual journey.

11 See also Sverre Raffnsøe, “Foucault’s *Confessions of the Flesh*. The fourth volume of *The History of Sexuality,* *Foucault Studies*, No. 25, 393-421 (October 2018), 415 (noting that “the volume ends rather abruptly”). Although the Introduction to Volume 2 may have served as an introduction to Volume 4, as it did to Volume 3, I also do feel that *Les Aveux de la chair* starts abruptly and that there may have been an opportunity, in a preface or introduction, for Foucault to perform some of the integrative work I am suggesting.


14 Foucault, *The Use of Pleasure*, 4 (“To speak of ‘sexuality’ as a historically singular experience also presupposed the availability of tools capable of analyzing the peculiar characteristics and interrelations of the three axes that constitute it: (1) the formation of sciences (*savoirs*) that refer to it, (2) the systems of power that regulate its practice, (3) the forms within which individuals are able, are obliged, to recognize themselves as subjects of this sexuality.”)

15 Foucault, *The Use of Pleasure*, 5 (“Now, as to the first two points, the work I had undertaken previously—having to do first with medicine and psychiatry, and then with punitive power and disciplinary practices—provided me with the tools I needed. The analysis of discursive practices made it possible to trace the formation of disciplines (*savoirs*) while escaping the dilemma of science versus ideology. And the analysis of power relations and their technologies made it possible to view them as open strategies, while escaping the alternative of a power conceived of as domination or exposed as a simulacrum.”)

16 Foucault, *The Use of Pleasure*, 5-6 (“But when I came to study the modes according to which individuals are given to recognize themselves as sexual subjects, the problems were much greater. […] Thus, in order to understand how the modern individual could experience himself as a subject of a “sexuality,” it was essential first to determine how, for centuries, Western man had been brought to recognize himself as a subject of desire.”)

17 Foucault, *The Use of Pleasure*, 6 (“It appeared that I now had to undertake a third shift, in order to analyze what is termed “the subject.” It seemed appropriate to look for the forms and modalities of the relation to self by which the individual constitutes and recognizes himself qua subject. After first studying the games of truth (*jeux de vérité*) in their interplay with one another, as exemplified by certain empirical sciences in the
seventeenth and eighteenth centuries, and then studying their interaction with power relations, as exemplified by punitive practices—I felt obliged to study the games of truth in the relationship of self with self and the forming of oneself as a subject, taking as my domain of reference and field of investigation what might be called “the history of desiring man.”

18 Foucault, L’Usage des plaisirs, 12.
19 Foucault, L’Usage des plaisirs, 13.
20 Joseph Tanke, “The Final ‘Final Foucault’?” Los Angeles Review of Books, August 1, 2018. Tanke’s essay on Foucault’s Confessions of the Flesh is brilliant and insightful, but in this one respect, I disagree—especially where he writes that “As a result, the emergence of this ethical axis compelled Foucault to scrap, or at least to defer, his analysis of modern society in terms of ‘bio-power’—his designation for the configuration of power and knowledge responsible for managing human life by treating individuals as members of a population, subjecting them to probabilistic calculations regarding health, sanitation, life-expectancy, birthrate, and race—in order to undertake a genealogy of ‘desiring man.’”

23 Foucault, L’Usage des plaisirs; Foucault, The Use of Pleasure; Lorenzini captures well the central features of aphrodisia in his essay, “The Emergence of Desire,” Critical Inquiry 45, 453 (“sexual pleasures, desires, and acts are not considered as bad in themselves, but they are conceived of as (potentially) dangerous forces that the individual should master by means of a rational stylistics of their use. On the other hand, the ‘principle of socio-sexual isomorphism’ ([Foucault, Subjectivity and Truth,] p. 102), according to which, in order to be positively valorized, sexual acts have to be isomorphic to the type of social relations existing between the sexual partners. For instance, while it would be legitimate for a married man to have (active) sexual intercourse with his wife and with his slave, as both of them are subject to his authority, it would not be legitimate for him to sleep with his neighbor’s wife because this kind of sexual relation would be heteromorphic to the social one—it would conflict with his neighbor’s authority and rights (see ST, pp. 77–83). Hence, these two principles define Greek aphrodisia not as an essential feature of subjectivity but as a unitary bloc of pleasures, desires, and acts that
are positively or negatively evaluated depending on the kind of relations one has with others.”) See also Stuart Elden, “Review: Foucault’s Confessions of the Flesh,” Theory, Culture & Society, March 20, 2018 (describing the transition from aphrodisia to flesh to sexuality).


27 As Lorenzini notes, the foil here is Nietzsche. Foucault’s history of the subject of desire, he writes, “questions Friedrich Nietzsche’s claim that ‘it was Christianity with its fundamental ressentiment against life that first made sexuality into something unclean.’” Daniele Lorenzini, “The Emergence of Desire: Notes Toward a Political History of the Will,” Critical Inquiry 45 (Winter 2019): 448-470, 452 (quoting Friedrich Nietzsche, Twilight of the Idols, or How to Philosophize with a Hammer, in “The Anti-Christ,” “Ecce Homo,” “Twilight of the Idols,” and Other Writings, trans. Judith Norman, ed. Aaron Ridley and Norman (New York: Cambridge University Press, 2005), 228). See also Raffnsøe, “Review: Foucault’s Confessions of the Flesh,” Foucault Studies, No. 25, 393-421 (October 2018), 400. Although Nietzsche is more absent in Volume 4 than he is in earlier work, it is nevertheless interesting to think of the place of Nietzsche in this genealogy of the desiring subject and of the modern subject of law. As François Ewald reminded me, the definition of the subject of law through the concept of responsibility is present in Nietzsche, in the second essay to the Genealogy of Morals, which rests as well on the historians of Roman law, especially on their work regarding the birth of the subject capable of contracting; so Nietzsche casts a shadow over this final volume as well. For a discussion of Foucault’s use of Nietzsche’s writings, see Bernard E. Harcourt, “The Illusion of Influence: On Foucault, Nietzsche, and a Fundamental Misunderstanding,” (May 24, 2019). Columbia Public Law Research Paper No. 14-627 (2019). Available at SSRN: https://ssrn.com/abstract=3393827

28 Foucault, Les Aveux de la chair, 9.

29 Foucault, Les Aveux de la chair, 48.

30 Foucault, Les Aveux de la chair, 351.

31 Foucault, Les Aveux de la chair, 361 (“There, are tied, by links that our culture has rather tensed than unknotted, sex, truth, and law.”).
36 Foucault, *L’Usage des plaisirs*, 16.
38 Foucault, *Les Aveux de la chair*, 50; Foucault develops these themes of “dire vrai” throughout the first chapter, referring, for instance, to the avowal in medieval penitence as a form of truth-telling, by contrast to the early Christian penitence itself entirely constituting a truth-telling. Foucault, *Les Aveux de la chair*, 104-105.
39 Foucault, *Les Aveux de la chair*, 51 n.*.
42 See Foucault, *Les Aveux de la chair*, 57 et seq.
44 See Foucault, *Les Aveux de la chair*, 110-113. Foucault had developed this analysis of the examination of conscience in Michel Foucault, *Wrong-Doing, Truth-Telling: The Function of Avowal in Justice*, ed. Fabienne Brion and Bernard E. Harcourt, trans. Stephen W. Sawyer (Chicago: University of Chicago Press, 2014), 97-103; as well as *The Government of the Living*, 241 (“When the light is lowered and my [partner], familiar with my habit, has become silent, I examine with myself my whole day […] and I take the measure again of my words and deeds, I measure them anew. […] I leave nothing out. […]’ Thus, in that discussion, Seneca says, ‘you spoke too aggressively, you reproached someone with too little reserve and you did not correct him. On the contrary, instead of correcting him, you offended him. See to it that in the future what you say is not only true, but that the person whom you speak can bear the truth you tell him.’”
45 Foucault, *Les Aveux de la chair*, 113; see also Foucault, *The Government of the Living*, 253 (“One knows oneself so that one can have access to knowledge of God, that is to say so that one can recognize what is divine in oneself, so that one can recognize the part or element in the soul that is of divine form, principle, origin, or at any rate in contact with God.”)
47 Foucault, *Les Aveux de la chair*, 137; see also Foucault, *The Government of the Living*, 301 (“What in fact does the money-changer do?” Foucault asks. “Cassian says the money-changer is someone who checks the metal of the coin, who checks its nature, its purity, and also the image stamped on it, someone who questions the coin’s origin. […]” [First possibility: an idea comes to mind with all the brilliance of philosophical language], one thinks it pure gold—and God knows how philosophers can gild their ideas—but they are only the ideas of philosophers and not truly Christian. So they must
be rejected. False metal.”)
51 Foucault, *Les Aveux de la chair*, 103.
52 Foucault, *Les Aveux de la chair*, 121 et seq.
53 Foucault, *Les Aveux de la chair*, 133 et seq.
54 Foucault, *Les Aveux de la chair*, 144.
55 Foucault, *Les Aveux de la chair*, 144.
56 Foucault, *Les Aveux de la chair*, 152.
58 Foucault, *Les Aveux de la chair*, 175.
64 Foucault, *Les Aveux de la chair*, 268.
65 Foucault, *Les Aveux de la chair*, 268-269; see also Nancy Luxon, “Review: *Les Aveux de la chair,*” *Contemporary Political Theory*, July 11, 2019 (noting that *Les aveux de la chair* “opens up (for a readerly audience if not those of early Christianity) the space of a spiritual subject not yet soldered to a juridical one – a claim radical in its time, but now more familiar from the intervening years of speculation.”)
70 Foucault, *Les Aveux de la chair*, 322.
73 Foucault, *Les Aveux de la chair*, 351 (Foucault extends this period to the Reformation); 356 (discussion of the “juridico-physical”).


Foucault, *Birth of Biopolitics*, 282-283; *Naissance de la biopolitique*, 285-286. This (third) critique can also be discerned in two other places. First on page 271 of the English, page 275 of the French edition, when Foucault begins the discussion, rhetorically:

> Is *homo economicus* […] not already a certain type of subject who precisely enabled an art of government to be determined according to the principle of economy, both in the sense of political economy and in the sense of the restriction, self-limitation, and frugality of government?

Second, on page 292 on April 4, 1979, in the last lecture, where Foucault is discussing the fact that “*Homo economicus* strips the sovereign of power inasmuch as he reveals an essential, fundamental, and major incapacity of the sovereign, that is to say, an inability to master the totality of the economic field. The sovereign cannot fail to be blind vis-a-vis the economic domain or field as a whole.” *Birth of Biopolitics*, 292; *Naissance de la biopolitique*, 296.

