Habermas, Lyotard and Political Discourse[1]

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The debate over political modernity has in recent years been given fresh impetus in the form of an exchange between Jean François Lyotard and Jürgen Habermas concerning the nature and legitimation of political discourse. Lyotard, often taken as representative of postmodernism, offers a critique of the modern project of offering methodological guarantees of the normative status of our judgments and of constructing "metanarratives" purporting to ground all forms of discourse in a philosophy of universal history. The preoccupation with metanarratives, he argues, must end and be replaced with a conception of political discourse as a contest of local narratives and incommensurable language games - a contest oriented not toward final resolutions but toward creative and novel statements. Habermas, wishing to preserve and continue the modernist search for a universal and impartial theory of justice, regards Lyotard's proposal as irrationalist and conservative - as lacking the resources necessary for carrying out a systematic critique of local practices and in detecting ideological distortions in our forms of discourse. His communicative ethics may be instructively opposed to Lyotard's localism in that the former represents a nonfoundationalist yet universalistic theory of justice, the aim of which is to discover an impartial standpoint from which a critique of social norms is possible. Habermas's strategy is in turn dismissed by Lyotard as representing merely one more metanarrative to be cast to the winds, one more cognitivist, universalistic, and formalist social theory promising transcendental guarantees.

It is important to note that the differences which separate these two figures do not go all the way down: each is endeavouring to fashion a nonfoundationalist and pluralistic conception of political discourse, a conception which forbids the privileging of certain voices within our political conversations and which defends a view of politics as a forum for the uninhibited exchange of judgments and interpretations. Accordingly, this debate ought to be viewed as in important ways a family dispute, albeit a factious one. Their differences centre around the role of universal criteria in the legitimation of judgments - Lyotard arguing that all talk of criteria is hopelessly metaphysical, and Habermas arguing that such criteria are indispensable for any social theory capable of legitimation and critique.[2] After outlining the terms of the debate and the respective positions of these two authors, we shall see that a third conception of politics without hegemony recommends itself; from out of this exchange emerges another alternative which eludes each author's criticisms of the other, borrows insights from both, and is in the end altogether friendly to neither. From this third point of view, Habermas is correct in characterizing Lyotard's postmodernist politics as anarchic and irrationalist, but this need not require us to follow Habermas back into the realm of the metanarrative in order to account for the possibility of legitimation and critique. What is needed for such purposes are criteria; what is needed is a conception of normative rationality which incorporates universal principles (of the kind that communicative ethics is in the business of reconstructing) on the one hand and local traditions and social forms on the other into a unified and coherent picture. There is

no need to choose, I argue, between the legitimacy of universal principles of justice and that of local, historically contingent political concerns which function in our discourse as immanent criteria. On the contrary, understanding the conditions of the possibility of the application of universal principles to particular contexts brings to light the necessary limits of a universalistic conception of justice. It forces us to abandon Habermas's search for a universalistic theory devoid of local or provincial elements, and to posit a reciprocal view of the relation of universal normative principles and local culture. I conclude by arguing that what renders our political conversations unstable and open-ended is not (contra Lyotard) an absence of political criteria but precisely an overabundance of such standards, criteria which are a function not only of our membership in communities but of our status as communicatively rational political actors.

1. Pagan Politics

Lyotard's outline of a postmodern "pagan" politics begins with a distinction between modern and postmodern forms of legitimation. Central to all modern political and epistemic[3] modes of legitimation, Lyotard contends, is the hegemony of the "metanarrative." The metanarrative is a theoretical and teleological form of discourse capable of describing and evaluating all other forms of discourse and of grounding our political and ethical decisions once and for all.[4] As well, the metanarrative purports to have transcended the historicity and contingency of first-order narratives. In modernity the latter are typically regarded as mired in conflict and contingency, subject to potential distortion, and accordingly in need of the kind of grounding which can only be provided by recourse to an overarching philosophy of history, such as Marx's fable of the grand march of history culminating in proletarian revolution. Lyotard defines postmodernity, by contrast, as an "incredulity toward metanarratives,"[5] as a dethroning of privileged forms of discourse, an undermining of foundations, theory, and teleology, as well as a suspicion of the "great 'actors' and 'subjects' of history - the nation-state, the proletariat, the party, the West, etc."[6]

We can no longer believe, Lyotard contends, in the hegemony of the metanarrative, but must reinstate the rights of small and local first-order narratives; political legitimacy in postmodernity resides always within these various genres of discourse and never "outside" or "above" them. Lyotard's picture of political legitimation is one of a "perpetual sophistic debate"[7] between speakers telling often radically different stories, a free market of opinions and deliberations. All utterances in such a debate are seen not as arguments but as "moves" and "countermoves" within a context and within a particular genre of discourse; they represent not deductions from principles but tactical moves within a language game.[8] Normative statements are always situated within a framework of generally applicable rules: "[T]hese rules are specific to each particular kind of knowledge, and the 'moves' judged to be 'good' in one cannot be of the same type as those judged 'good' in another, unless it happens that way by chance."[9] There is no single discourse of legitimation, no common measure between these various genres of utterance; rather, in postmodernity there will be a plurality of such discourses, none possessing a privileged or "meta" status.

On this view, communication is far from a well-regulated and distortion-free exchange of arguments. "To speak," Lyotard dramatically puts it, "is to fight"[10]; communication is a practice in which "questions, requests, assertions, and narratives are launched pell-mell into battle. The war is not without rules, but the rules allow and encourage the greatest possible flexibility of utterance."[11] Political discourse is an unstable and unending series of gestures and utterances, "the trumping of a communicational adversary, an essentially conflictual relationship between tricksters."[12] Such debate employs many different types of statements and language games: "in the same discussion one goes, one leaps, from one language game to another, from the interrogative to the prescriptive, and so on."[13] The point in all of this is not to privilege one form of discourse over all others but precisely to "maximize as much as possible the multiplication of small narratives,"[14] to become conversant in various genres of discourse, and above all to invent new moves and "master strokes" within established discursive practices. "Progress" in political debate, if there can be said to be such a thing, consists not in producing "valid" deductions or in generating consensus, but precisely in upsetting consensus and destabilizing our political practices. Indeed, rather than privileging consensus, Lyotard suggests that the more inventive our move, the less likely it is to generate agreement, "precisely because it changes the rules of the game upon which consensus had been based."[15] Political progress consists either in inventing new moves within old games, in refining and modifying established rules, or in inventing new games.

In opposition to political modernity, Lyotard's conception of justice aims not at finality or convergence upon the "truth" - upon the last word in matters of justice - but at divergence, at inventing ever newer moves, more and more novel opinions without granting anyone the honor of having the last word. The aim, as one commentator puts it, is "simply to produce *more* work, to generate new and fresh statements, to make you have 'new ideas', or, best of all, again and again to 'make it new.'"[16] The modernist's search for ever deeper grounds is replaced with the postmodernist's search for creative moves, without criteria for judging the truth of our statements. Lyotard's position in this respect is perhaps furthest removed from that of Kant, for whom "the idea of justice is associated with that of finality."[17] Finality, Lyotard writes, "means a kind of convergence, of organization, of a general congruence, on the part of a given multiplicity moving toward its unity."[18] To the Kantian ideal of unity Lyotard opposes multiplicity and diversity of opinion, leaving us with the question of whether it would be possible to fashion into a moral and political law the maxim, "'Always act in such a way that the maxim of your will may, I won't say not be erected,' but it is almost that, 'into a principle of universal legislation.'"[19]

It is important for our purposes to note that for Lyotard political legitimation is not only a pluralistic but also a local and immanent matter. Contra Habermas, there is nothing inherent in the nature of normative assertions which requires that they claim for themselves universal authority. Rather, our statements have only a limited scope and are contingent upon a prior consensus on the rules which define the games we play and the rules playable within them. They are contingent upon the agreement of the game's current players, and are accordingly subject to future modification or cancellation.

Furthermore, Lyotard is emphatic in pointing out that pagan politics belongs to the order of opinion and not to the order of knowledge or truth. "There is," he writes, "no knowledge in matters of ethics. And therefore there will be no knowledge in matters of politics."[20] While following the Sophists in this respect, Lyotard also follows Aristotle in recognizing the priority of practical judgment over method and conceptual models.[21] In matters of politics and ethics, he argues, we are required to make prescriptive statements and to form judgments without the aid of criteria of any kind. This constitutes the very heart of pagan politics - that our judgments are neither determinate nor informed by training and habit, nor guided by a *sensus communis*, nor by concepts or criteria, but are instead (so it seems) essentially decisionistic. In Lyotard's words, "One is without criteria, yet one must decide."[22] All talk of criteria, Lyotard supposes, is illegitimate in postmodernity since

> [T]he idea of criteria comes from the discourse of truth and supposes a referent or a "reality" and, by dint of this, it does not belong to the discourse of justice. This is very important. It must be understood that if one wants criteria in the discourse of justice one is tolerating de facto the encroachment of the discourse of justice by the discourse of truth.[23]

We are faced, Lyotard argues, with two possibilities: either our prescriptive statements "come to us from elsewhere" or not.[24] Either we are the addressees of universal criteria of justice, mere conformists to standards and obligations "always" known (a view which he attributes to the Jews as well as to preliterate societies[25]), or such criteria are not "received," in which case we must be constantly amending our political code, deciding what our obligations shall be, and so on (a conception which Greek mythology discloses - one in which a society of gods is perpetually forced to redraw its code). Choosing the latter over the former, Lyotard pays homage to the Sophists and rhetoricians, arguing that our prescriptive statements are always subject to discussion and contestation: "between statements that narrate or describe something and statements that prescribe something, there is always some talking to be done."[26]

To the question of where our ability to judge comes from (in the absence of criteria and a *sensus communis*), Lyotard responds in a Nietzschean vein: it is the will to power which accounts for this ability, and not concepts or criteria of any kind.[27] As he goes on to argue, the speaker's affective response plays an indispensable role in political judgment: "I mean that, in each instance, I have a feeling, that is all. It is a matter of feelings, however, in the sense that one can judge without concepts."[28] The true function of the political philosopher, then, is to hazard opinions and submit judgments to the general discussion - and not to devise theories or learned discourses concerning the nature of justice.

2. Communicative Ethics

To all of this, Habermas's rejoinder is not unpredictable, especially to those familiar with the terms of the Gadamer/Habermas debate or with the latter's recent work on "conservatism" (new, young, and old). Habermas finds Lyotard's politics to be uncritical and conservative.[29] According to Habermas, Lyotard's preference for the Sophists over Kant, for diversity over consensus, for narrative over theory, and for judgment over method

renders his seemingly radical claims irrational and conservative since, despite the emphasis on novelty, Lyotard's postmodern critique of the modernists' project of constructing a neutral frame of reference in the service of political critique leaves us ill-equipped to challenge existing institutions and to distinguish legitimate argument from mere persuasion. Lyotard's postmodernism, relying as it does upon sophistic persuasion without the benefit of methodological guarantees, leaves us open to manipulation and oppression. As everyone knows, sophistic persuasion has a dark side best represented by Callicles's lust for power, a commonplace which Lyotard's conception of the Sophists as innovators obscures. Moreover, forces of institutionalized repression and ideology may systematically distort our discursive practices. In view of this, what is needed is the means to distinguish legitimate from ideological forms of agreement and to challenge existing institutions in a way which will command legitimate assent. We must, Habermas contends, construct an emancipatory and critical discourse which will compel rational assent, one which takes us beyond mere persuasion and counterpersuasion.

For Habermas, Lyotard's agonistic and fragmented conception of political discourse leaves a community with no place, as one commentator puts it, for it to "recollect itself and to think critically about its goals and practices."[30] Habermas agreed with Lyotard that political discourse must constitute a forum wherein an unconstrained exchange of opinions is possible and in which all speakers enjoy equal rights of participation. Habermas also maintains, however, that political discourse represents the means by which rational speakers become engaged in a process of coordinating action. Political actors are involved not only in a continuing search for interesting opinions but in a comprehensive process of mutual accommodation through collective deliberation on shared goals and on the proper nature and function of political institutions. Because discourse and action are tied to forces of ideology and power, it is a shared concern of political communities to institute forms of discourse free from domination and hegemony.

At work in Habermas's argument is a certain understanding of the nature of language according to which the many language games in which we participate are all part of a larger structure, a network of utterances, gestures, and interpersonal relations which binds language users into a community. This network of relations builds solidarity and allows us to speak and act collectively.

> Coordination action [David Kolb writes] is not simply a matter of arranging parallel responses to stimuli. In its fullest sense, such coordination demands that we all act, together, as rational agents. It is this conjunction of rationality and sociality that in various ways distinguishes Habermas from the Sophists, from Lyotard, and from Plato.[31]

Contra Lyotard, then, Habermas maintains that our various discursive practices do indeed display a common measure, namely that they bind participants in interaction into a community concerned with reaching an understanding about something in the world. We are involved in an overarching process of coordinating action, a process in which we must offer each other assurances concerning the truth, appropriateness, and sincerity of our statements. The necessity of coordinating action through communication reveals the inadequacy of Lyotard's vision of a community marked by divergence and dissent - or,

at any rate, places limits upon it by bringing to light the need for a degree of consensus in our conversations and dealings with one another.

Habermas's remarks concerning the necessity of coordinating action within political communities is no doubt a legitimate one, even if the theory of language underlying it be called into question. Solving coordination problems is undoubtedly an important part of political practice, and unconstrained dialogue aimed at reaching consensus is, as Habermas suggests, our best strategy in solving such problems. Lyotard's view of politics as a gay science, however, focusing as it does upon the role of novelty and dissent, runs the risk of overlooking a corresponding need for consensus concerning real problems of mutual accommodation. Seyla Benhabib makes this point as follows:

> But there are times when philosophy cannot afford to be a "gay science," for reality itself becomes deadly serious. To deny that the play of language games may not turn into a matter of life and death and that the intellectual cannot remain the priest of many gods but must take a stance is cynical.[32]

This raises the possibility that we need not choose at all between the value of consensus and that of diversity - between the need to harmonize our actions through dialogue aimed at consensus and the value of dissenting voices. While Lyotard is correct to warn us against allowing our various agreements to freeze over into customs to which we must blindly conform, he carries his warning much further than it need go and leaves us with a vision of political community which looks too much like a state of perpetual revolution with little capacity for formulating common projects and sustaining the kind of human solidarity which is a precondition for any viable society.[33] Lyotard is also mistaken to view (apparently all forms of) consensus as merely a temporary lull in the conversation - as an indication not that we have succeeded in accommodating each other's desires and generating a sense of political solidarity, but that we have lost our imagination.

Habermas's next move is to argue that implicit in all communicative action is an orientation toward rational legitimation. Implicit in our discursive practices is an assurance that the claims we make are capable of being validated with respect to the truth of what they assert, their appropriateness to the situation, and our sincerity in uttering them. Habermas rejects Lyotard's opting for opinion over truth and for dissent over consensus on the grounds that an orientation toward consensus and truth is an inherent part of communicative action (a claim which Lyotard rejects). Moreover, Habermas maintains that it is in the nature of validity claims that they "transcend any local context" and apply universally quite irrespective of all historical contingencies. In his words,

> [V]alidity claims have a Janus face: as claims, they transcend any local context; at the same time, they have to be raised here and now and be de facto recognized if they are going to bear the agreement of interaction participants that is needed for effective cooperation. The transcendent moment of *universal* validity bursts every provinciality assunder; the obligatory moment of accepted validity claims renders them carriers of a *context-bound* everyday practice. Inasmuch as communicative agents reciprocally raise validity claims with their speech acts, they are relying on the potential of assailable grounds. Hence, a moment of *uncondition-*

> *ality* is built into *factual* processes of mutual understanding - the validity laid claim to is distinct from the social currency of a de facto established practice and yet serves it as the foundation of any existing consensus. The validity claimed for propositions and norms transcends spaces and times, "*blots out" space and time.*[34]

What is needed in order to distinguish legitimate argument from persuasion, the argument continues, are universal criteria which only a theory employing a transcendental-pragmatic mode of justification can provide. Transcendental-pragmatic justification, while distinct both from an "ultimate" justification (*Letzbegrundung*) in Karl-Otto Apel's sense and from deduction from first principles, allows the theorist to demonstrate the rational authority of certain universal principles of justice and to formulate a neutral standpoint from which all agreements and social norms may be assessed, quite irrespective of the latter's historical location. Habermas does at times take the phenomenological concept of the lifeworld seriously, i.e. he recognizes that the individual is always already historically situated, employing and presupposing a reservoir of implicit knowledge in the form of language and culture. Habermas also acknowledges the ontological impossibility of taking a holiday from one's lifeworld, Cartesian style. He nonetheless proposes, however, that a truly universalistic, cognitivist, and formalistic theory of justice is possible and that, for this reason, the philosopher is indeed capable of remaining what he terms the "guardian of rationality."[35]

The methodology Habermas adopts in his "communicative ethics" involves reconstructing the normative presuppositions of practical rationality, understood as unconstrained communicative interaction oriented toward reaching understanding. Habermas proposes that communicative action contains within itself unavoidable operative presuppositions that have a normative content. Our ability to engage in discursive practices - our "communicative competence" - possesses a stable and universal core of structures and rules, some of which function as indispensable normative conditions of discourse. Anyone who engaged in argumentation has, it is claimed, always already presupposed and hence consented to certain normative rules of argumentation, rules which no speaker may contradict without falling into a performative contradiction. Habermas writes:

> Anyone who participates in argumentation has already accepted these substantive normative conditions - there is no alternative to them. Simply by engaging in argumentation, participants are forced to acknowledge this fact. This transcendental-pragmatic demonstration serves to make us aware of the extent of the conditions under which we always already operate when we argue; no one has the option of *escaping to alternatives*. The absence of alternatives means that those conditions are, in fact, inescapable for us.[36]

It is in these rules that communicative ethics is interested, for only rules of this kind furnish the philosopher with an impartial standpoint from which legitimation and critique of existing discursive practices is possible.

Communicative action, Habermas argues, counterfactually anticipates an ideal speech situation as its implicit telos.[37] The theorist's task is to specify the implicit and formal conditions of the ideal speech situation in order to function as universal and

quasi-transcendental criteria with which to critique any and all social norms. Any normative claim will be said to have failed if we can demonstrate that the asserted proposition is contradicted by noncontingent and inescapable conditions of discourse. The central principle of communicative ethis is that of universalization, which Habermas articulates as follows: a normative principle is universally valid only if

> *All* affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests (and these consequences are preferred to those of known alternative possibilities for regulation).[38]

Habermas thus refashions the categorical imperative into the principle that all acceptable evaluative judgments must incorporate generalizable interests. He also replaces the Kantian model of solitary moral consciousness with a conception of normative rationality in which questions of social justice are subject to appraisal in public discourse. Habermas specifies three further principles, each designed to offset hegemony and ensure communication free from domination. These discursive rules ensure that all speakers enjoy equal rights of participation and that no force but the force of the better argument shall hold sway among a community of inquirers:

1. Every subject with the competence to speak and act is allowed to take part in a discourse.

2. (a) Everyone is allowed to question any assertion whatever.
   (b) Everyone is allowed to introduce any assertion whatever into the discourse.
   (c) Everyone is allowed to express his attitudes, desires, and needs.

3. No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in (1) and (2).[39]

While making no claim to have unearthed an exhaustive list of the normative presuppositions of communicative rationality, Habermas does propose to have discovered a neutral standpoint from which an impartial critique of all social norms, regardless of the traditions of which they are a part, is possible.

This transcendental-pragmatic methodology allows Habermas to sharply separate justification from social currency or the de facto acceptance of normative claims. Having grounds for our normative beliefs, on this view, has nothing whatever to do with the intersubjective recognition which certain beliefs and practices acquire.[40] There may be good reasons both to deny the rightness of socially recognized practices and to demonstrate that a principle which has not met with social acceptance is in fact rationally redeemable. This radical separation is owing to Habermas's rigorous conception of what it means to have grounds for belief. Having legitimate grounds is a matter not of a merely contingent consensus but of transcendental necessity.

Grounds have a special property: they force us into yes or no positions.

> Thus, built into the structure of action oriented toward reaching understanding is an element of unconditionality. And it is this unconditional element that makes the validity that we claim for our views different from the mere de facto acceptance of habitual practices. From the perspective of first persons, what we consider justified is not a function of custom but a question of justification or grounding.[41]

Habermas supposes that it is only this kind of transcultural validity which awards dignity to normative principles, while the contingent outcomes of communicative exchanges - irrespective of how much consensus they produce - stand in no obvious relation to the truth.[42]

More central to our concerns is a second dichotomy Habermas salvages from the legacy of the Enlightenment between justification and application. This second dichotomy is most apparent in Habermas's occasional (and brief) treatment of an objection stemming from hermeneutics and neo-Aristotelianism to formalistic and universalistic normative theory. The objection focuses upon the enabling conditions of the context-specific application of universal principles of the kind communicative ethics in the business of formulating. Recognizing that rules do not govern their own applications, Habermas heeds the hermeneutic insight that the practical application of universals to particular contexts requires a capacity for reflective judgment, but dismisses the conclusion some draw from this concerning the impossibility of an entirely formal and universal theory of justice.[43] Siding with Kant over Aristotle, Habermas contends that practical considerations regarding the application of rules in no way affect the matter of their justification since the transcendental nature of justification is logically distinct from and prior to all practical questions of implementation. The gap separating form from content, he maintains, need not be filled with Aristotelian phronesis since even the prudent implementation of principles makes use of second-order principles, or "principles of practical reason," of which he mentions as examples that means should be proportionate to ends and that all relevant aspects of a case should be considered.[44] Principles of this kind make for the possibility of impartial applications free from the workings of local traditions.

The obvious problem with this view, however, is that there is no rule for deciding what are to count as the relevant aspects of a case (much less its most salient aspects), or what is to count as a proper proportion between means and ends. Concepts such as relevance, salience, and proportion resist formal encapsulation. Moreover, as is now notorious, the appeal to meta-rules only leads to an infinite regress since second-order rules require further, third-order, rules to guide their application (for precisely the same reason that first-order rules require second-order rules), and so on.[45] The infinite regress thus entailed by conceiving of practical judgment as a rule-governed procedure is one from which Habermas fails to escape.

He nevertheless endeavors to defend his position on application as a subordinate and unproblematic matter by taking as an example of prudent implementation of universal norms the case of human rights legislation in modern democratic states.

> The history of human rights in modern constitutional states offers a wealth of examples showing that once principles have been recognized, their application does not fluctuate wildly from one situation to another but tends to have a *stable direction.*[46]

Finally, while granting the elusiveness of principles, Habermas nonetheless awards priority to general principles over particular contexts and reflective judgment. Practical application, while a necessary part of normative experience, can also "distort the meaning of the norm itself; we can operate in a more or less biased way in the dimension of prudent application."[47]

It seems, then, that our two authors have reached something of an impasse: for Habermas, Lyotard's pagan politics smacks of irrationalism while for the latter, Habermas's quest for emancipation merely represents one more ill-fated attempt to rescue the metanarrative from extinction. From where Lyotard stands, the metanarrative of emancipation - a story of the steady progress of communicative competence culminating in the universal emancipation of mankind - is no more hallowed than its Marxian and Freudian predecessors. It seeks merely to regularize the moves which are permissible within political discourse by privileging a certain narrative over all others. This conveying of privilege upon a single discursive genre is no longer credible.

> That would be like saying: The only important game, the only true one, is chess. That is absurd. What is pagan is the acceptance of the fact that one can play several games, and that each of these games is interesting in itself insofar as the interesting thing is to play moves. And to play moves means precisely to develop ruses, to set the imagination to work.[48]

The alleged "meta" status of the narrative of emancipation, he argues, is spurious; by rights it represents only one story among others, none of which alone represents the supreme seat of reason. As well, Lyotard holds that "theories themselves are concealed [first-order] narratives, that we should not be taken in by their claims to be valid for all time,"[49] and that the hegemony of seemingly unshakeable systems should not deter us from playing different moves and inventing new stories.[50]

3. Universality and the Problem of Application

Summing up, Lyotard and Habermas, while sharing a nonfoundationalist and dialogical view of politics, differ sharply on the matter of criteria and their role (or lack thereof) in justification, Lyotard viewing all talk of criteria as hopelessly metaphysical, thus limiting himself to local forms of narrative, and Habermas maintaining that universal criteria and principles are indispensable for any truly emancipatory social theory. There is more than a little room for doubt, however, that a nonfoundationalist politics must embrace either of these apparently polar opposites. Philosophical problems articulated in terms of rigid dichotomies are more often than not poorly formulated and ripe for deconstruction, and this includes not only the dichotomies which Habermas draws between transcendental validity and de facto consensus, and between the justification and application of normative

principles, but also the now commonplace opposition between universalism and localism or communitarianism. Habermas is essentially correct in characterizing Lyotard's localism as lacking the critical resources necessary for a theory of justice, and in pointing out the need for universal principles in serving a critical function. However, a close inspection of what is involved in the application of universal normative principles to particular contexts reveals the inadequacy of a purely universalistic and formalist theory of the kind Habermas defends, and suggests that a political theory employing universal criteria must, as a matter of necessity, incorporate local elements if it is to be capable of reasonable implementation. Out of this opposition, a more adequate position will emerge which incorporates insights from Lyotard and Habermas while avoiding the pitfalls of both; it avoids, that is, both the irrationalism and localism of Lyotard and the rationalistic universalism of Habermas, and it develops a conception of normative rationality which takes its cue from certain neo-Aristotelian and hermeneutic insights.

It will not be contested here that Habermas's reconstruction of the normative presuppositions of communicative action succeeds in generating criteria whose legitimacy is universal - or, at any rate, as universal as the practice of unconstrained dialogue aimed at reaching consensus (which may or may not be strictly universal). In those cultures at least which recognize and award some priority to the practice of free and uninhibited dialogue, the normative conditions of possibility of dialogue must be acknowledged as legitimate principles or criteria of justice.[51] What will be contested, however, is Habermas's privileging of such criteria over all local considerations, a move which overlooks the very factors which render the implementation of universals possible.

Habermas's response to what we may term the hermeneutic objection outlined above (to the effect that the practical question of context-specific applications of universal principles of justice in no way affects the prior theoretical question of their justification) is inadequate. If we are to take communicative ethics seriously as a plausible universalistic theory of justice, the question of application needs to be recognized as a genuine problem for any social theory which endeavours to be universalistic. Specifically, Habermas must meet an objection which I shall now briefly outline, an objection whose basis orientation is supplied by philosophical hermeneutics.

The argument begins with the premise that intelligibility is a necessary condition of rational justification; we cannot justify what we do not understand. As Gadamer recognizes, however, understanding is inextricably bound up not only with intepretation but with application as well. Just as understanding the meaning of a text involves applying the text to the reader's own situation, similarly an understanding of universal principles of justice necessarily includes knowing how the principles in question are applied in practical contexts. The meaning of a universal rule is never comprehended, as it were "in itself" or prior to its actual implementations; neither universals nor particulars can be understood in themselves and in isolation from each other, but only in a complex unity which includes a moment of application. In Gadamer's words,

> Application does not mean first understanding a given universal in itself and then afterward applying it to a concrete case. It is the very understanding of the

> universal - the text - itself. Understanding proves to be a kind of effect and knows itself as such.[52]

Hermeneutics maintains that application

> can never signify a subsidary operation appended as an afterthought to understanding: the object of our application determines from the beginning and in its totality the real and concrete content of hermeneutical understanding. Application is not a calibration of some generality given in advance in order to unravel afterwards a particular situation. In attending to a text, for example, the interpreter does not try to apply a general criterion to a particular case; on the contrary, he is interested in the fundamentally original significance of the writing under his consideration.[53]

It would be mistaken to regard application as a process in which an independently existing particular encounters and is subsumed under an independently existing universal. As Jeff Mitscherling has argued, universals (in this context, general principles) only come into being as such in the process of being instantiated in, or applied to, particular contexts; universal and particular (general principle and particular instantiation) exist only "as the two 'poles' of one and the same creative dialectical activity," and not as "separate and distinct" items.[54] This is the meaning of Gadamer's thesis that understanding and application (as well as interpretation) must be regarded "as comprising one unified process"[55] - that is, that the meaning of a universal is inseparable from its particular instantiations. To return to Habermas's own example of principles of human rights, the meaning of such rights is inseparable from the forms of legislation in which they have their being, or from the actual ways in which they govern and limit human action. We can neither understand nor justify human rights without comprehending their meaning, i.e. how they are given content in governing particular situations. Habermas implicitly recognizes this, writing that improper rule applications may distort the meaning of the rules themselves. However, he overlooks the analogous truth that proper rule application may disclose new dimensions of the rules' meaning. The rule itself is unintelligible until its meaning - and that means its meaning for actors in their concrete circumstances - is disclosed in practical terms.

Given this intimate connection between a principle's meaning and its implementations, we must now ask what makes the application of universal principles to particular contexts possible. Since principles do not govern their own applications,[56] it seems that we are left with two possibilities. The first is that further, second-order, principles make the application of first-order principles possible; the second is that reflective or practical judgment is required. (Habermas defends both possibilities). We have seen that the former is untenable on account of the infinite regress it entails. Moreover, it is normally a feature of general principles that they allow for exceptions, many of which cannot be spelled out in advance on account of the contingency and complexity of normative experience. This means that the practical application of principles must involve a reflective judgment with residual decisionistic elements in order to allow the speaker to see something as the kind of thing a particular rule picks out, to recognize exceptions, and to stop the infinite regress of rule governing rule governing rule. Judgment is a necessary skill for mediating between

universal and particular, rule and context - a skill requiring hermeneutic insight rather than methodological demonstrations.[57]

As Aristotle knew, practical judgment is neither a mechanical nor a neutral procedure which may be radically divorced from contingent, historical factors. It may be better be likened to a skill,[58] a capacity to see what is required and to respond appropriately; a skill which, like Aristotelian phronesis, is informed not only by universals but above all by particulars, by an understanding of particular features of actual cases.[59] More importantly for our argument, judgment is a capacity which always operates within a lifeworld. The competent political actor is educated not only by his own experience, but by that of the historical community to which he belongs. The connection between our capacity to arrive at prudent decisions and our training and education in the characteristic concerns and projects of a particular community is far from accidental.[60] Moreover, the capacity for practical judgment draws upon a tacit understanding (or preunderstanding) of ourselves and the historical community of which we are a part, upon the shared traditions, practices, and forms of life which describe our historical situation. A sense of the moral life of the community - a sense of what is possible and what is important here and now - always informs our reflective judgment, as does the moral character and training of the speaker. To return once again to Habermas's example of principles of human rights, a primary reason why the implementations of such principles do not exhibit an entirely stable direction is that local interpretations of human rights language - of concepts such as freedom, autonomy, and equality - tend to fluctuate considerably, depending as they do upon their function and relative priority within a broader fabric of local political concerns. The ways in which we understand the concepts of freedom and equality (whether we choose to emhasize the liberty of the individual or collective rights, "positive" or "negative" freedoms, or whether we seek equality of opportunity, of economic condition, or of something else) have far-reaching consequences on questions of political policy, as does the way in which we prioritize such values. The competent political agent is always oriented by such lifeworld considerations and not merely by universal and formal principles; this contrasts with Habermas's political actor, who runs the risk of becoming a homeless cosmopolitan.

This line of argument leads us to recognize the inadequacy of communicative ethics as it stands, i.e. as a purely universalistic and formalistic social theory devoid of local elements. It points out, in other words, the necessary limitations of a theory which awards priority to rules over rule-applications and to universal over local and historical factors. Because principles underdetermine practical rationality, leaving us as they do with an impoverished understanding of political discourse, a purely rule-governed theory of justice of the kind Habermas defends must fail as it stands, and any theoretical approach recognizing principles of any kind must not regard the practical matter of application as either rigidly separable from the project of justification or as a unidirectional and formal procedure. If our conception of justice is to contain principles of any kind, then we must recognize a dialectic between such principles and their practical implementations. We must recognize what Herbert Schnädelbach describes as an inevitable "feedback" between rules and their real-life applications. Applications, as he puts it, "possess a constitutive significance for the stock of rules in question."[61] Expressed differently, there must be a reciprocity or two-way illumination between form and content, rule and rule-application,

such that the practical circumstances in which normative rules see the light of day render the rules themselves changeable. The dialectical relationship spoken of here is, as Schnädelbach has pointed out, only a particular instance of a more general hermeneutic circle between the whole and its parts, the universal and the particular. On this account, it makes as much sense to say that actual cases are applied to our normative principles as it does to say that principles are applied to actual cases.[62] This leaves us with a less rationalistic conception of the justification and application of principles than that formulated by Habermas, one which recognizes the hypothetical and context-sensitive character of rules - and one which recognizes that problems of justification and application must be solved together or not at all.

The line of argument also forces us to abandon Habermas's faith in an entirely universalistic social theory. Because the application (and indirectly the justification) of universal principles must rely upon a practical judgment which is always already historically situated - which is necessarily informed by the practices, traditions, and forms of life specific to a particular historical community - a universalistic theory unmixed with local elements or values is incapable of practical implementation. It is unemployed and unemployable. If our conception of social justice is to include a place for universal principles (and I am arguing that it ought to), then it must also include the various local factors (practices, values, traditions) which always inform the speaker's moral character and judgment. Because the latter are indispensable in the practical implementation of the former, neither universal principles nor local values may be subordinated to the other; rather, both carry justificatory weight. The principle of democracy, for instance, while universalizable, will be applied in very different ways and involve different institutional arrangements depending upon the culture in which it is applied; it will depend upon a community's political concerns, values, history, and the various contingencies which characterize it. Whether we adopt a form of democracy following the American model, a parliamentary democracy, direct democracy, or some other form, will depend upon certain facts about our community, considerations which justify our opting for one set of institutional arrangements over another. This represents a view of normative rationality more in keeping with philosophical hermeneutics than with the Kantian tradition in which Habermas situates himself. It is in keeping with Gadamer's conception of an historically and situationally sensitive practical reason,[63] one which recognizes, in other words, the historicity and contingency of rationality.

If the above line of reasoning is correct, we have reason to reject Habermas's dichotomies between application and justification, and between justification and social consensus. It is, to say the least, odd that Habermas, who normally takes the phenomenological concept of the lifeworld seriously, should feel the need to radically separate philosophical or normative validity from the shared values and practices which constitute an ethos and to formulate a transcendental theory of justification which soars over the heads of existing, historical subjects. Is Habermas not still dreaming the rationalist's dream of leaping out of history and judging the sum of our practices and beliefs from a standpoint somehow outside of it, a place above the fray of the merely contingent? Is Habermas's universalism not lacking in historical consciousness, foregoing as it does any interaction with the historicial contingencies which inform who we ourselves are and what we care about? In order for communicative ethics to have any plausibility, it must abandon

Habermas's unqualified universalism and incorporate local criteria into its account of justification.

4. Splitting the Difference

It is possible to refashion communicative ethics to avoid the metaphysical and teleological trappings of the "ideal speech situation" while retaining a critical function. The ideal speech situation is a metaphysical embellishment which obscures the merits of Habermas's theory. The challenge confronting communicative ethics is to articulate a non-teleological and, to use Lyotard's term, "agonistic" narrative of emancipation which retains its universalistic ambitions without reverting to metaphysics. And this can be accomplished by, in effect, splitting the difference between Lyotard and Habermas.[64] What is needed is a theory of justice which avoids the wilfulness and irrationalism of Lyotard's paganism while abandoning the rationalistic universalism of Habermas, and this may be achieved only by incorporating universal and local criteria into a unified legitimation theory. Against both Lyotard and Habermas, we must be capable of legitimizing political judgments by employing criteria implicit in first-order discourse. While some such criteria will carry universal legitimacy (notably freedom, democracy, equality), others will not, and the legitimacy of both is a function of their import to our mode(s) of self-understanding. Contra Lyotard, the political actor is never without criteria. We are always already oriented as political agents by the traditions and forms of life to which we belong; as historical beings, our orientation toward practical situations is informed by the training and education we receive as members of an historical and political community. The political actor is always an historical actor, conducting himself within an ethos of shared understandings and preunderstandings, of habits and customs, an heir to traditions and forms of life in terms of which members of a community understand and orient themselves.[65] Appropriate forms of action involve appropriating, applying, extending and transforming our historical traditions in a creative and prudent manner. The political actor, as John Caputo expresses it, is no more an isolated subject, "looking helplessly about with the eyes of pure reason for rules of conduct and ethical criteria" than the "epistemological subject" is outside of an historical lifeworld.[66] Rather, political judgment - as Aristotle knew and as Lyotard forgets - is a product of training and education; while dispensing with the need for methodological guarantees, it is nonetheless oriented by the political ethos of which it is a part. For all the brave talk in Lyotard about invention and creativity, he overlooks the fact that invention does not begin from scratch. Even the most creative imagination never begins at the beginning but is always already under way, an heir to the projects and preunderstandings of the traditions to which it belongs.

The substantive content of our ethos - the characteristic concerns and common interests of the members of a community, the various political aspirations, practices, and preunderstandings which represent the normative dimension of the traditional fabric of a culture, and in terms of which the process of education occurs[67] - function as imminent criteria in the legitimation of normative judgments. We do not need to justify our political opinions from the vantage point of a Habermasian utopia. Legitimation, albeit of a more humble-hearted kind, is possible by making use of both universal principles of justice and the criteria furnished to us by the political traditions constitutive of our community. These criteria are most likely to be banal, and frequently outright platitudinous; they will include

the common good, freedom, equality, cultural autonomy, economic prosperity, national security, the emancipation of the oppressed, and so on - none of which is uniquely and supremely authoritative in the manner of so-called "first princples," and none of which functions as a grand telos representing the end of history. It is in the name of such shared concerns that judgments are legitimated and that a viable (albeit limited and provisional) social consensus is allowed to emerge. Lyotard, while acknowledging that "knowledge has no final legitimacy outside of serving the goals envisioned by the practical subject, the autonomous collectivity," fails to explain why such common goals do not qualify as criteria in the legitimation of judgments.[68] His response may be that all talk of criteria is hopelessly metaphysical, that it presupposes a "referent" or a "reality" of some sort, and thus belongs to the "discourse of truth." This statement, however, strikes me as spurious. If any of the standards I have alluded to carry an unsavory metaphysical baggage, then that would surely not count in their favor. However, it remains for Lyotard to argue that any of them in fact do.[69] Innovation and justification both presuppose a background of implicit understanding, a background which does not provide a stable foundation to guarantee the transcendental validity of our statements, but which does serve to inform our judgments by providing criteria which spare us from the licentious excesses of paganism.

Finally, while I take Lyotard to be correct in characterizing political discourse as open-ended and at time perilous, the reason is not that we are without criteria to guide our judgments, but precisely that we have too many criteria to allow our forms of discourse to be rendered stable - too many legitimate standards, all commanding some loyalty and displaying a troublesome habit of coming into conflict. Freedom and equality, for instance, are notorious for making awkward company; likewise the common welfare and individual autonomy. The briefest glance at everyday political practice and decision-making reveals that it is an overabundance rather than an absence of criteria which generates the kind of dissent Lyotard describes, and which prevents our discourse from being as well-orchestrated as Habermas wishes it could be. I hasten to add that this state of affairs is by no means to be regretted, nor should it prompt us to follow Habermas in privileging any single criterion or narrative above all others. Our practical task, rather, is to arrive at judgments while employing various standards and telling a variety of stories, deciding from case to case which criterion ought to take precedence in particular instances.

Nor is it to be regretted that such criteria are themselves contested; indeed one of the reasons why political debate is as open-ended and conflict-ridden as it is, is that in addition to the contested nature of political statements, the criteria whose function it is to legitimize such statements are themselves contested and subject to competing interpretations and applications. The standards which certify our opinions may themselves become a topic for debate, and may be replaced with new and more perspicacious ones. They are contested not only with respect to their meaning but also with respect to their relative priority within a broader fabric of political concerns. Whether we choose, for instance, to award a higher priority to individual liberty or to the common welfare, to equality of opportunity or of economic condition, will have far-reaching policy implications, as will the meaning that is ascribed to such concepts as emancipation or cultural autonomy (not to mention the meaning of such hermeneutic hot potatoes as "multiculturalism" and the "distinct society").

I maintain, finally, that we are capable of recognizing the legitimacy of dissent and novelty within our discursive practices without abandoning the need for legitimation. This is possible with the aid of criteria, universal and local, which provide us with the wherewithal for critique without transcendental guarantees and without recourse to metanarratives.

Notes

1. I wish to thank Greg Johnson, Jeff Mitscherling, and Gary Madison for their many helpful comments and suggestions in the preparation of this essay.

2. Although the need for and nature of consensus is at the forefront of this dispute, my discussion focuses upon criteria: specifically, whether we need any, and if so, whether such criteria be universal or local. On the question of consensus, both Lyotard and Habermas agree that de facto consensus is no guarantee of the legitimacy of our political judgments, however, Habermas does defend a counterfactual consensus theory of normative rationality, as we shall see.

3. I shall leave to one side the question of scientific and epistemic legitimation and focus entirely on Lyotard's treatment of political/ethical justification.

4. Jean-François Lyotard and Jean-Loup Thébaud, *Just Gaming*, tr. Wlad Godzich (Minneapolis: University of Minnesota Press, 1985), 28.

5. Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trs. Geoff Bennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1984), xxiv.

6. Frederick Jameson, "Foreword" to *The Postmodern Condition*, xii.

7. Lyotard, *Just Gaming*, 66.

8. Citing Wittgenstein's term, Lyotard writes that "each of the various categories of utterance can be defined in terms of rules specifying their properties and the uses to which they can be put - in exactly the same way as the game of chess is defined by a set of rules determining the properties of each of the pieces, in other words, the proper way to move them." (Lyotard, *The Postmodern Condition*, 10).

9. *Ibid*, 26.

10. *Ibid*, 10.

11. *Ibid*, 17.

12. Jameson, "Forword" to *The Postmodern Condition*, xi.

13. Lyotard, *Just Gaming*, 93.

14. *Ibid*, 59.

15. Lyotard, *The Postmodern Condition*, 63.

16. Jameson, "Foreword" to *The Postmodern Condition*, ix.

17. Lyotard, *Just Gaming*, 94.

18. *Ibid*, 94.

19. *Ibid*, 94. To the question of whether such a thing is indeed possible, of whether "a politics regulated by such an idea of multiplicity [is] possible," Lyotard responds: "And here I must say that I don't know" (*Ibid*, 94).

20. *Ibid*, 73. It may seem odd to postmodernists that Lyotard should buy into such an old-fashioned, Platonic dichotomy as that between knowledge and opinion, given that postmodernists normally seek to characterize a realm of opinion which is not radically opposed to a realm of knowledge, as David Kolb has pointed out. (David Kolb, *Postmodern Sophistications* [Chicago: University of Chicago Press, 1990], 36).

21. I make no effort here to defend Lyotard's reading - or better, appropriation - of Aristotle. Lyotard reads Aristotle as in all important respects in line with the Sophists in matters of ethics and politics. Lyotard's Aristotle looks more like a Sartrean existentialist than he normally does - or, at any rate, more French.

22. Lyotard, *Just Gaming*, 17.

23. *Ibid*, 98.

24. *Ibid*, 17.

25. *Ibid*, 17.

26. *Ibid*, 17.

27. *Ibid*, 17. I shall also make no effort here to defend Lyotard's questionable appropriation of Nietzsche.

28. *Ibid*, 15.

29. This comes as no surprise, given that Habermas levels an identical charge against everyone from Gadamer to Foucault to Bataille to Derrida.

30. Kolb, *Postmodern Sophistications*, 39.

31. *Ibid*, 39.

32. Seyla Benhabib, "Epistemologies of Postmodernism: A Rejoinder to Jean-François Lyotard" in *Feminism/Postmodernism*, ed. Linda Nicholson (New York: Routledge, 1990), 123.

33. Richard Rorty makes a similar point, arguing that we should replace Lyotard's conception of politics (and science) as aiming at a permanent state of revolution with a Kuhnian picture of a ceaseless alternation between revolution and normalcy: "To say that

'science aims' at piling paralogy on paralogy is like saying that 'politics aims' at piling revolution on revolution. No inspection of the concerns of contemporary science or contemporary politics could show anything of the sort. The most that could be shown is that talk of the aims of either is not particularly useful" (Rorty, "Habermas and Lyotard on Postmodernity" in *Essays on Heidegger and Others* [Cambridge: Cambridge University Press, 1991], 166).

34. Jürgen Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures*, tr. Frederick Lawrence (Cambridge: The MIT Press, 1990), 322-23.

35. Jürgen Habermas, *Moral Consciousness and Communicative Action*, tr. Christian Lenhardt and Shierry Nicholsen (Cambridge: The MIT Press, 1990), 20. Communicative ethics may best be regarded as a theory of social justice rather than a classical ethical theory. Habermas does not hold the view that philosophy can identify a single privileged form of life or find a systematic answer to the general question, "What should I do?" Neither is communicative ethics, as Habermas conceives it, interested in generating ethical norms or positions on practical moral issues. Following in the Kantian tradition, its central concern is with right or just action - with finding a method to rationally guarantee the validity and impartiality of socio- political judgments.

36. *Ibid*, 130.

37. Habermas, *The Philosophical Discourse of Modernity*, 323.

38. Habermas, *Moral Consciousness*, 65.

39. *Ibid*, 89.

40. It is of considerable methodological importance to Habermas to be able to separate normative validity from conventional agreement. As he puts it, "the 'existence' or social currency of norms says nothing about whether the norms are valid. We must distinguish between the social fact that a norm is intersubjectively recognized and its worthiness to be recognized." *Ibid*, 61.

41. *Ibid*, 19-20.

42. *Ibid*, 49.

43. As Habermas puts it, "The question of the context-specific application of universal norms should not be confused with the question of their justification. Since moral norms do not contain their own rules of application, acting on the basis of moral insight requires the additional competence of hermeneutic prudence, or in Kantian terminology, reflective judgment. But this in no way puts into question the prior decision in favour of a universalist position." *Ibid*, 179-80.

44. *Ibid*, 206-7.

45. This argument has been made in recent years by Ronal Beiner (cf. *Political Judgment* [Chicago: University of Chicago Press, 1983], 131) and Hubert and Stuart Dreyfus (cf. "What is Morality? A Phenomenological Account of the Development of Ethical Expertise" in *Universalism vs. Communitarianism: Contemporary Debates in Ethics*, ed. David Rasmussen [Cambridge: The MIT Press, 1990], 257), among others. Although the argument goes back to Kant and Wittgenstein, it also recalls the "third man" argument of Plato's *Parmenides*: that if an individual p is what it is only in virtue of its likeness to the ideal p, there must be a still more ideal p (a second-order p) to which both individual p's and the ideal p are similar, and so on *ad infinitum.*

46. Habermas, *Moral Consciousness*, 105. I shall discuss why this statement is clearly false toward the end of the paper.

47. *Ibid*, 105.

48. Lyotard, *Just Gaming*, 60-61.

49. Jean-François Lyotard, "Lessons in Paganism" in *The Lyotard Reader*, ed. Andrew Benjamin (Cambridge: Basil Blackwell), 130.

50. This is Lyotard's solution to the much-heralded problem of ideology - that if our forms of discourse are systematically distorted we ought to invent new first-order narratives rather than try to rise "above" them with the help of a totalizing metadiscourse. The proliferation of such stories would prevent any one of them from becoming monolithic and obscuring our critical faculties. No doubt Habermas would respond that following Lyotard's recommendation would merely multiply the ways in which we are capable of oppressing each other.

51. My endorsement of communicative ethics is not without several qualifications. The methodology of reconstructing the normative enabling conditions of discourse is indeed compelling. What is not compelling, however, are the unnecessary embellishments of Habermas's theory, the affiliations which serve only to clutter an otherwise plausible argument. I have in mind Habermas's problematic affiliations with neo-Marxian teleology and "evolution" as well as with Kohlberg's theory of moral development. Habermas does not always choose his friends carefully, and numerous such affiliations and embellishments add systematicity at the expense of plausibility. For an equally compelling but less grandiose/Germanic version of communicative ethics, see G.B. Madison's *The Logic of Liberty* (Westport, Conn.: Greenwood Press, 1986). Madison emerges from the hermeneutical and rhetorical traditions and unlike Habermas does not borrow heavily from the Frankfurt school or from Kohlberg's moral development theory.

52. Hans-Georg Gadamer, *Truth and Method*, Second Revised Edition, tr. Joel Weinsheimer and Donald Marshall (New York: The Crossroad Publishing Corporation, 1989), 341.

53. Hans-Georg Gadamer, "The Problem of Historical Consciousness" in *Interpretive Social Science: A Second Look*, ed. Paul Rabinow and William Sullivan (Los Angeles: University of California Press, 1987), 125-26.

54. Jeff Mitscherling, "Hegelian Elements in Gadamer's Notions of Application and Play." *Man and World 25 (1992), 65.*

55. Gadamer, *Truth and Method*, 308. Cf. also Gadamer, *Reason in the Age of Science*, tr. Frederick Lawrence (Cambridge: The MIT Press, 1989), 129.

56. I (together with Habermas) make this assumption since, as Charles Larmore expresses it, "it is not always true that moral rules have enough content to settle by themselves whether something falls under their concept. It is not always true that judgment has no other task than simply to *see* that moral rules indeed suffice to identify the things of which the concept may be predicated" (Charles Larmore, *Patterns of Moral Complexity* [New York: Cambridge University Press, 1988], 4).

57. As Beiner writes, "Application of a law or teaching is not like affixing a pre-given label to a pre-differentiated particular, but rather, involves a highly demanding hermeneutic discipline. The interpretation of legal or scriptural texts presupposes the culturally acquired attributes of taste, cultivation, and ethical habituation, and it is these qualifications of sound judgment that receive their classical elucidation in Aristotle's exemplary analysis of *ethos*" (Beiner, *Political Judgment*, 25).

58. Gadamer (*Truth and Method*, 31) and Harold Brown (*Rationality* [New York: Routledge, 1988], 165) have both likened judgment to skilful behavior.

59. In a recent discussion of Aristotle, Martha Nussbaum underscores the non-technical and flexible nature of moral deliberation: "This requirement of flexibility, so important to our understanding of Aristotle's non-scientific conception of choice, is then described in a vivid metaphor. Aristotle tells us that a person who attempts to make every decision by appeal to some antecedent general principle held firm and inflexible for the occasion is like an architect who tries to use a straight ruler on the intricate curves of a fluted column. Instead, the good architect will, like the builders of Lesbos, measure with a flexible strip of metal that 'bends round to fit the shape of the stone and is not fixed' (Aristotle, *Nicomachean Ethics*, II37b30-2). Good deliberation, like this ruler, accommodates itself to what it finds, responsively and with respect for complexity. It does not assume that the form of the rule *governs* the appearances; it allows the appearances to govern themselves and to be normative for correctness of rule" (Martha Nussbaum, *The Fragility of Goodness* [Cambridge: Cambridge University Press, 1989], 301).

60. This point has been argued by Larmore (*Patterns of Moral Complexity*, 18-19) and Gadamer (*Truth and Method*, 20-21), among others.

61. Herbert Schnädelbach, "Remarks about Rationality and Language" in *The Communicative Ethics Controversy*, Seyla Benhabib and Fred Dallmayr, eds. (Cambridge: The MIT Press, 1990), 283.

62. *Ibid*, 283.

63. Gadamer defends an historical rationality, one for which all criteria are historically constructed and a function of the questions and characteristic concerns of the tradition in which one is situated. In opposition to the Enlightenment's conception of an absolute reason (one which disregards its own finitude), Gadamer, in *Truth and Method*, supports a practical rationality which is essentially tied to tradition, prejudice, authority, and language.

64. Rorty, in his discussion of this debate, likewise proposes to have things both ways (Rorty, *Essays on Heidegger and Others*, 164-76). For my part, however, the manner in which I split the difference between these two authors bears no obvious resemblance to Rorty's proposal, his concerns in this respect being somewhat different from my own.

65. Gadamer has similarly defended the historical character of ethical thinking as part of his wider project of characterizing the historicity of all understanding. As is well known, Gadamer argues that understanding is always situated within an historically constructed horizon - that prejudice, tradition, and authority constitute the necessary background against which interpretation occurs. In his words, "We are always dominated by conventions. In every culture a series of things is taken for granted and lies fully beyond the explicit consciousness of anyone, and even in the greatest dissolution of traditional forms, mores, and cultures the degree to which things held in common still determine everyone is only more concealed" (Gadamer, *Reason in the Age of Science*, 82).

66. John D. Caputo, *Radical Hermeneutics: Repetition, Deconstruction, and the Hermeneutic Project* (Bloomington: Indiana University Press, 1987), 247.

67. As Gadamer puts it, "But the most important thing in education is still something else - the training in the *sensus communis*, which is not nourished on the true but on the probable, the verisimilar. The main thing for our purposes is that here *sensus communis* obviously does not mean that general faculty in all men but the sense that founds community" (Gadamer, *Truth and Method*, 20-21).

68. Lyotard, *The Postmodern Condition*, 36.

69. What, pray tell, would be the metaphysical "reality" standing behind freedom? or emancipation? or indeed any of the criteria I have mentioned? Might it be a Platonic form, perhaps?