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Clarifying the Foucault–Habermas debate

Morality, ethics, and ‘normative foundations’

Abstract Habermas charges that Foucault’s work ‘cannot account for its normative foundations’. Responses to Habermas have consisted mostly of, on one hand, attempts to identify foundational normative assumptions implicit in Foucault’s work, and, on the other hand, attempts to show that Foucault’s work discredits the very idea of normative foundations. These attempts have suffered from a lack of clarity about Habermas’ notion of normative foundations. In this article I clarify the terms of the debate by considering Habermas’ critique of Foucault in light of his moral philosophy. I examine three representative responses to Habermas on Foucault’s behalf, which attempt to identify normative foundations in Foucault’s work, and I show why none of them meets Habermas’ requirements. Finally, I argue that while Foucault’s political judgments cannot have normative foundations, Foucault does adhere to the principles of Habermas’ discourse ethics, and his doing so does not conflict with his genealogical approach.

Key words cryptonormativity · discourse ethics · Michel Foucault · foundations · Jürgen Habermas · truth

1 Introduction: Foucault and Habermas, yet again?

Do we really need to rehash the so-called Foucault–Habermas debate? Is there really anything left to be said, after so many years and so many articles, which so often quote so many of the same lines? I think, in fact, there is, because it seems to me that what is at issue in the debate – or, rather, what *ought* to be at issue, given the positions held by the two figures at issue – has never been clearly explicated. Clarifying the terms of the debate is important not only so that we can decide whether Foucault is innocent or guilty of the charges Habermas levels at him –

or whether, if he is guilty, it is better to be guilty than innocent. It will also help us to understand just what politics and political criticism are, or can be, about. For the debate concerns the relationship between political judgments (the purpose of which is to motivate political action) and their non-political (but still normative) bases, and therefore it concerns a fundamental political problem: how ought normative ideals to be translated into political practice? Habermas' case against Foucault is, essentially, that Foucault's philosophical approach precludes his having the right kind of bases for his political judgments. But what *are* bases of the right kind, for Habermas, and what is the relationship between political judgments and their bases supposed to be? These are the questions that remain to be answered clearly.

The problem is that while Habermas' work in moral philosophy – principally as collected in *Moral Consciousness and Communicative Action*, published in German in 1983 – shows what Habermas takes a proper normative foundation to look like, Habermas himself does not connect the dots between his moral philosophy and his critique of Foucault, and it is not immediately obvious how the one relates to the other. In fact, as we will see, even Habermas does not seem to have been clear on this. As I will try to show here, in light of Habermas' own moral philosophy, his critique of Foucault seems to have been misplaced. What needs to be done, then, and what I will do in this article, is to clarify Habermas' critique of Foucault in *The Philosophical Discourse of Modernity* in the light of his moral philosophy.

The reaction of Habermas and his allies (primarily Nancy Fraser) against Foucault comprised what Barry Allen, in a paper published in 1998, identified as the first of two waves of Foucault's reception among Anglo-American political theorists.¹ Central to that first wave was Habermas' charge that Foucault's work is guilty of the 'arbitrary *partisanship* of a criticism that cannot account for its normative foundations'.² The political judgments apparent in Foucault's work are arbitrary, according to Habermas, because Foucauldian genealogy undercuts all moral bases of the sort on which any non-arbitrary political claim must rest. Because Foucault cannot consistently appeal to any norms, according to Habermas, his judgments are 'cryptonormative': Foucault must mask the fact that his judgments rest on normative assumptions to which he is not entitled.³

The second wave Allen identifies consisted of responses on Foucault's behalf, which tried to answer Habermas' challenge on its own terms by, in Allen's words, 'suggesting that the missing normative premise had been there all along'.⁴ However, as I will show in the cases of three exemplary responses – those of Allen himself, Michael Kelly, and James Johnson – they failed to come up with principles that are properly *foundational* (in the sense required by Habermas in the light of his completed

moral philosophy) to Foucault's judgments. Allen's own response fails because the 'normative premise' it picks out belongs to the sphere of what Habermas characterizes as the *ethical* rather than the *moral*, according to the somewhat idiosyncratic distinction that Habermas makes between these two terms. As we will see, only *moral* principles can be foundational, in the sense of requiring no further justification. Michael Kelly's proposed foundation, meanwhile, fails to be properly foundational because it cannot *justify* any normative judgment. Finally, James Johnson's proposal – which has it that Foucault's foundational principles are basically the same as Habermas' own – fails because, as it happens, those principles do not justify Foucault's most important political judgments.

After the two waves identified by Allen, we may discern at least one more. Certain writers have refused Habermas' terms of engagement and suggested that Foucault's critical tools be turned on the very idea of normative foundations.⁵ These writers agree with Habermas that the nature of Foucault's work is such that it could not have any normative foundations. Some of them – for instance, Wendy Brown, who suggests that 'what is done with [the results of genealogy] is a matter of political taste and political timing'⁶ – agree with Habermas that Foucauldian political judgments must be arbitrary, but they regard this simply as a fact, obscured by people like Habermas, about political judgments.

There is no question, on the post-metaphysical assumptions that Foucault and Habermas share, that *most* political judgments are, if not arbitrary, then at least unsusceptible to any final justification by appeal to a foundational principle. The difference between Foucault and Habermas is that it seems as if, on Foucault's terms, *all* political judgments must be unsusceptible to such justification, while on Habermas' terms, some – indeed, the very most fundamental – are not. However, I will suggest in this article that Foucault's non-foundational project, and Habermas' foundational one, are concerned with two different aspects of politics, corresponding, respectively, to the spheres Habermas identifies as ethical and moral. They are, then, not necessarily incompatible with each other, and I suggest that they are actually complementary.

The proposition that Foucault's and Habermas' projects are not diametrically opposed is nothing new – indeed, it goes right back to Foucault, who expressed it himself toward the end of his life.⁷ A decade ago, in what may have been the most significant attempt thus far at ending the debate, Johnson argued that not only are there certain principles founding Foucault's political judgments, but, in fact, those principles are basically the same as Habermas' – according to Johnson, Foucault justifies his political judgments with reference to something much like Habermas' own 'discourse ethics'.⁸ Johnson's argument, as I will try to show, is both importantly right and importantly wrong. For, on one hand, it is true that Foucault is – as we all must be, particularly

if we want to be *effective* critics – committed to the principles of Habermas' discourse ethics. Yet, on the other hand, those principles are not, and cannot be, the *foundations* of Foucault's social criticism. Foucauldian criticism, by its very nature, cannot have foundations of that kind. But this does not vitiate it, even on Habermas' own terms, considered in their full development. As long as Foucauldian positions are argued for *in accordance with* the principles of discourse ethics (which, for Habermas, amounts to saying, as long as they are argued for, strictly speaking, at all), those positions are not illegitimated by the fact that they are not argued for *on the basis of* any foundational principles.

2 Habermas' distinction between the moral and the ethical

In order to understand what form Habermas holds proper normative foundations to take, it is crucial to understand the distinction that he draws between ethics (*Sittlichkeit*) and morality (*Moralität*). Indeed, Habermas says that one of the main tasks of post-metaphysical philosophy is to 'prevent [conceptual] confusions; for example, it can insist that moral and ethical questions not be confused with one another'.⁹ Given Habermas' characterization of the ethical and the moral, when he charges that Foucault's critique lacks a normative foundation, what he is demanding is something in the sphere of morality and not of ethics.

For Habermas, what distinguishes the moral from the ethical is that the moral sphere encompasses 'procedural' or formal questions of *justice*, which admit of universal answers, whereas the ethical sphere encompasses substantive questions of *good*, the answers to which can only be relative and particular. Since, for Habermas, there is no metaphysical source of value which could be appealed to as *the* good, 'ethical questions of the good life can be distinguished from moral questions by a certain self-referentiality. They refer to what is good *for me* or *for us*.'¹⁰ Thus, as Habermas has it, there is an

... internal relation between ethical questions and problems of self-understanding. . . . The question 'What is the best thing for me (or us) in this situation?' must be answered in the light of the underlying question: 'Who am I, and who would I like to be?' ('Who are we, and who would we like to be?')¹¹

Hence there can be no universally correct answers to ethical questions, and no universal agreement in the ethical sphere: 'The fact that ethical questions are implicitly informed by the issues of identity and self-understanding may explain why they do not admit of an answer valid for everyone.'¹²

On the other hand, the moral, for Habermas, is characterized by formalism, universalism, and impartiality. Moral theory is to be 'restricted

to the question of the *justification* of norms and actions’, and to remain silent on ‘the question of how justified norms can be *applied* to specific situations’.¹³ Morality has nothing to say about what ought to be done, but concerns only how it is decided what ought to be done. Questions about what ought to be done therefore always bring into play ethical considerations, and not only moral ones.

Suppose, for example, that the residents in an apartment building want to decide whether the building’s regulations should prohibit religious displays on balconies. The procedures by which the issue is decided belong to the moral sphere: whether or not everyone’s views are taken into account and given equal weight is a moral matter. On the other hand, particular arguments for or against such a prohibition, made with reference to the values of self-expression, mutual recognition, community spirit, and so forth, belong to the ethical sphere.

The importance of this distinction for the purposes of this article is that, for Habermas, normative *foundations* must be moral, not ethical. Ethical principles – or, more properly, values – cannot be foundational, because by their very nature one can always ask *why* an ethical value is valuable. While there can be no final, non-circular justification for ethical values, it is always possible to justify an ethical value with reference to something else of presumed value. For instance, against a regulation banning religious displays on balconies I may base an argument on an appeal to the value of religious freedom. But there is nothing inherently valuable about religious freedom. I might argue that religious freedom is valuable because the expression of our deepest beliefs is important to the well-being of individuals. But there is nothing inherently valuable about the well-being of individuals, and so, if I were challenged and wanted to continue to press my case, I would have to appeal to some further value that would justify the promotion of the sort of well-being that is fostered by religious expression.

I will show below how Habermas takes the foundational principle of his discourse ethics (which, of course, on his terms is not an ethics at all but a theory of morality¹⁴) to be insusceptible to a regress of this kind. But first, now that we have seen how Habermas distinguishes between the moral and the ethical, we may try to see how the distinction can be related to Foucault. In his later work, Foucault makes a distinction of his own between morality and ethics which bears a certain resemblance to Habermas’. On Foucault’s terms, ethics – which is what his last works are mainly concerned with – has to do with ‘the kind of relationship you ought to have with yourself . . . which determines how the individual is supposed to constitute himself as a moral subject of his own actions’.¹⁵ Foucault’s ethical sphere is similar to Habermas’, then, in its self-referentiality. However, Foucault speaks of morality only in terms of ‘moral codes’ that either ‘determine which acts are permitted or forbidden’ or ‘determine the positive or negative value of the different

possible behaviors'.¹⁶ In the context of Foucault's distinction between morality and ethics, 'morality' refers only to what particular societies happen to permit or forbid and value or disvalue. Thus, while certain elements of what is permitted and forbidden may (or may not) belong to what Habermas identifies as the moral sphere, Foucault's moral sphere as a whole belongs, in its self-referentiality (where the self in question is now the society rather than the individual), to Habermas' ethical sphere.

But, though Foucault does not make a distinction like Habermas' between the moral and the ethical, some comments he makes in a late interview – coincidentally, in answer to a question related to Habermas – tend in the direction of such a distinction, even if not under the headings of ethics and morality. Asked whether he sees any value in what the interviewer describes as the Habermasian moral ideal of consensus, Foucault's initial reply is that 'the idea of a consensual politics may indeed at a given moment serve either as a regulatory principle, or better yet as a critical principle'; when pressed, he says:

I perhaps wouldn't say regulatory principle. . . . I would say, rather, that it is perhaps a critical idea to maintain at all times: to ask oneself what proportion of nonconsensuality is implied in such a power relation, and whether that degree of nonconsensuality is necessary or not, and then one may question every power relation to that extent. The farthest I would go is to say that perhaps one must not be for consensuality, but one must be against nonconsensuality.¹⁷

Notice that Foucault here envisages 'consensuality' in just the sort of role that a moral principle should play, for Habermas. First, Foucault suggests that the consensuality principle could be *universal* in its scope: 'one may question every power relation' as to its consensuality. Second, Foucault suggests that the principle does not *require* any particular action, but rather only *rules out* certain ranges of action. To invoke a Habermasian slogan, the principle concerns justification, not application – actions must be justified with reference to the principle, but one cannot apply the principle to determine just what should be done.

These are, of course, very rough and tentative remarks made off the cuff in an interview. But they indicate a certain direction of thought. That tendency is discernible in another comment Foucault makes in the last interview he gave, a comment which seems, on its face, directly opposed to Habermas. When Foucault says that 'the search for a form of morality acceptable to everybody in the sense that everyone should submit to it, strikes me as catastrophic',¹⁸ what he refers to as 'morality' is what Habermas calls 'ethics': Foucault is not thinking here of abstract, procedural rules of justice but rather of concrete 'styles of existence'. What is 'catastrophic' is privileging a particular concrete form of life and attempting to impose it on everyone (for instance, in our example,

to pre-empt any debate on balcony displays through the imposition of a certain interpretation of the value of freedom of religion). The catastrophe lies in forcing everyone to live a certain kind of life. In other words, Foucault may be seen to be just as concerned as Habermas is to keep what Habermas calls the ethical from encroaching on the domain of what Habermas calls the moral, i.e. to keep necessarily particular and relative values from being treated as universal principles.¹⁹

3 Habermas' normative foundations: 'discourse ethics'

Before examining Habermas' normative foundations, we should note that they are developed out of some fundamental assumptions that Habermas shares with Foucault. Habermas, like Foucault, not only is a 'post-metaphysical' philosopher, but also is averse to the idea of what Foucault often calls the 'originary subject', which Habermas criticizes throughout *The Philosophical Discourse of Modernity* under the name of 'the philosophy of the subject' (though Habermas considers Foucault to succumb to it despite himself). Thus Habermas cannot do what, according to Allen, Foucault dismisses the foundationalisms of the liberal tradition for always doing, namely, locating their foundations in 'some putative insight into non-political [or, more generally, non-normative] reality . . . something about God or reason or nature'.²⁰ Habermas, for instance, would be in full agreement with Foucault's criticism of Chomsky for trying to derive foundational principles from what may be local and contingent facts about human nature.²¹ Thus, the purpose of Habermas' moral philosophy is to work out a non-metaphysical alternative to the foundational principles of traditional, metaphysical moral philosophy. The result, known as 'discourse ethics', serves as the foundation for his political critique. An examination of Habermas' discourse ethics, then, will provide us with a standard against which we might evaluate answers on Foucault's behalf to Habermas' challenge to Foucault.

First, a brief statement is in order concerning just what sort of criticism Habermas seeks to provide with foundations. In *The Theory of Communicative Action*, Habermas analyses what he calls 'the colonization of the lifeworld' by the forces of instrumental rationality, which is to say, the displacement of discourse belonging to the category of 'communicative action' – i.e. action which 'excludes . . . all motives except that of a cooperative search for the truth'²² – by discourse belonging to the category of 'strategic action' – i.e. what Habermas calls 'success-oriented' rather than 'understanding-oriented' action.²³ This colonization of the lifeworld consists in social coordination increasingly being achieved through the twin 'steering media' of state power and market forces rather than argumentative deliberation. According to

Habermas, the pathologies of the modern state – epitomized by the ‘legitimation crisis’ in Germany that inspired Habermas’ earlier work of that name, in which he sketches out the themes elaborated in *The Theory of Communicative Action* – stem from this colonization.²⁴ Social cohesion is lost as the illocutionary function of language, i.e. the function of forging a shared understanding, is overwhelmed by the perlocutionary function, i.e. the function of bringing about some result.²⁵ Obvious examples of this phenomenon are political rhetoric and advertising, and the widespread cynicism and disaffection they foster.

But, of course, we can (and do) live with cynicism and disaffection; we can live with a lack of social solidarity and commitment to state institutions. For some people, the value of increased economic prosperity outweighs the disvalue of these social pathologies – and some, of a certain individualist persuasion, would deny that they are pathologies at all. Between such people and Habermas there is an *ethical* difference; they have different views concerning how it is good to live. If that were all there was to it, Habermas would have to simply give up on those people, because there would be no way to *convince* them that their values are wrong, and hope that there are enough people sharing his values to give his critique traction. For Habermas, however, there is more to it than an argumentatively irresolvable clash of values: apologies for the colonization of the lifeworld are not merely the product of a different ethic; they are morally mistaken. To show why, I turn now to examine Habermas’ discourse ethics.

Habermas’ discourse ethics begins with a reformulation of Kant’s categorical imperative, which, in its requirement that norms be *universalizable*, Habermas holds to have captured the essence of the moral point of view.²⁶ This reformulation, which Habermas calls ‘condition (U)’ (standing for ‘universal’), is as follows: for a norm to be valid, it must be the case that ‘*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)’.²⁷ According to Habermas, condition (U) represents the Kantian essence of the moral point of view; for Habermas, to be moral is to be impartial, and to be impartial means not to arbitrarily favor anyone over anyone else – not even a very large majority over a minority of one. From condition (U), Habermas derives the specific foundational principle of his discourse ethics, which he calls ‘principle (D)’ (standing for ‘discourse’). Principle (D) is as follows: ‘Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in practical discourse*’.²⁸

In support of the proposition that condition (U) manifests the form that a foundational moral principle *necessarily* must take, Habermas

cites Karl-Otto Apel's argument against 'moral fallibilism' – that is, the position that there can be no ultimately successful justification of any moral principle, because there can be no properly *foundational* principle that puts a non-arbitrary end to demands for justification.²⁹ Apel notes that fallibilism derives its strength from the fact that moral principles typically

... founder on the fact that any rational final justification leads into a logical trilemma: either (1) into an *infinite justification regression*, insofar as each principle of justification must itself again be justified; or (2) into a *logical circle (petitio principii)*, in that the principle that is to be justified is already presupposed in its justification; or (3) into a dogmatization of a principle (axiom) that one is not prepared to justify any further.³⁰

If condition (U) succeeds in evading this trilemma, Habermas reasons, then it satisfies at least the formal requirements for being a properly foundational moral principle. And as far as Habermas is concerned, *only* principles taking the form of condition (U) can evade the trilemma. Such principles manage to do so because, as Apel argues, condition (U) – like the principle of non-contradiction – is 'necessarily presupposed in all argumentation'.³¹ Just as argument can only take place between discursive partners who share an understanding that contradiction is proscribed as a logical error, moral argument can only take place between discursive partners who share an understanding that everyone is to be treated impartially: not only would one not enter into argumentation, but argumentation per se cannot take place, except under that condition.

According to Apel, condition (U) is a necessary condition of moral argumentation because it 'cannot, without the *pragmatic self-contradiction* of those who are participating in arguing, be disputed as such a principle (i.e. *not without inconsistency between the act of assertion and the asserted propositions*').³² This point is the crux of discourse ethics, and therefore of Habermas' foundationalist project: condition (U) cannot be argued against – it is a necessary and unassailable moral foundation – because its negation cannot even be asserted without committing a pragmatic (or 'performative', as Habermas' translators put it) contradiction. If one refuses to base one's moral decision-making on the validity of the arguments of others rather than on one's own interests and desires, then one is not engaged in moral argumentation at all, and to claim the contrary is to contradict one's words with one's actions – i.e. to commit a performative contradiction.

Given Habermas' dialogical view of rationality, principle (D) follows naturally from condition (U).³³ Contrary to the usual assumptions of Kantian moral philosophy, Habermas does not believe that solitary subjects have the epistemological resources to be capable of adequate moral reasoning. One cannot achieve the proper degree of impartiality

through, for example, thought experiments conducted from a Rawlsian original position. It is not good enough for *me* to imagine how *I* would feel in your position if a certain political course of action were undertaken; I must actually ask *you*, or at least take into account what you would say about it. I am never entitled to dismiss your position on the basis of what I take to be the proper view of the matter.

It might appear that a politics founded on such a moral foundation would have to be the most radical liberalism imaginable. Indeed it seems that the result must be undesirable if not impossible – if *unanimous* approval is needed for political decisions to be morally sound, how could *any* non-trivial, morally sound political decision ever be made? Fortunately, despite first appearances, discourse ethics does not always require unanimity; in fact it does not even dictate that we always undertake communicative rather than strategic action.

For Apel, what is at stake in discourse ethics is the human ‘ab[ility] to think in a valid form’.³⁴ But this – as Habermas himself recognizes – is true only so long as it is assumed that the ‘valid form’ of thought is inextricably tied to argumentation and communication – and, more basically, that it is essentially linguistic and propositional. As Habermas points out, Apel does not show that these conditions actually obtain. What Apel has shown, against the moral skeptic, is that anyone who enters into argumentation is thereby committed to certain principles. But ‘the fact remains’, notes Habermas,

... that what the skeptic is now forced to accept is no more than the notion that as a *participant* in a process of *argumentation* he has implicitly recognized a principle. . . . This argument does not go far enough to convince him in his capacity as an *actor* [in general] as well.³⁵

Apel’s argument, in other words, has force only over people who presume to engage in argumentation; it does not show that people are under any kind of obligation to enter into argumentation in the first place, or to remain engaged in argumentation. Habermas continues: ‘Even if participants in an argumentation are forced to make substantive presuppositions . . . they can still shake off this . . . compulsion when they leave the field of argumentation.’³⁶

There is a certain circularity to discourse ethics: to say that one must engage in an open give-and-take of reasons when one has submitted to argumentation amounts to saying that one must engage in an open give-and-take of reasons when one has submitted to an open give-and-take of reasons. Moreover, Habermas’ principle (D) amounts to saying that practical rules are justified when the people concerned with them accept whatever justifications are offered for them. However, this circularity is not vicious. It is, first of all, unavoidable if moral philosophy is to refrain from metaphysical *speculation* about ultimate sources of right for which

there can be no final justification. For the post-metaphysical moral philosopher the nature of right can only be determined in discursive practice and not by appeal to something outside discourse. What this means is that principle (D) is the *only* possible foundational moral principle, because principle (D) is the very source of the conditions under which discursive practice *can* be determinative of right. Every norm except principle (D) is fallible, no norm except principle (D) is ever finally justified, because for a norm to be justified is only for it to be justified *to* whomever openly seeks its justification.

In practical terms, this means that the social critic is not allowed to exist in a bubble of theoretical self-righteousness: it is not possible to know that the norms one favors are the right norms even though everyone else opposes one, and in fact it is not possible for the norms one favors to *be* the right norms when everyone else opposes one, because a substantive norm is *made* right (i.e. it is made the right one to follow) when and only when everyone affected, who is willing to enter into argumentation about it, gives it their approval.³⁷ Thus, quite to the contrary of the common accusation that Habermas' political theory is utopian and ineffective,³⁸ Habermas' theory would force any legitimate political criticism to be at least possibly effective by requiring it to actually (and not just abstractly, in something like an original position) justify itself to whomever is open to its justification.

I will conclude this section by summarizing the relationship between Habermas' social criticism and its normative foundations, with reference to the example of political discourse. Cynicism is fostered when politicians (e.g. in a pre-election debate) are nominally engaged in argumentative discourse, keeping up the pretense that they adhere to proper argumentative procedures and demanding that their opponents do likewise, but are manifestly concerned with strategic goals at the expense of forging a shared understanding. This cynicism is widely deplored – it is generally believed that, all other things being equal, our lives would be better without it – but at the same time, it is widely accepted as a cost of our form of competitive, representative democracy, which is valued on other grounds. To *demonstrate* that our currently typical practices of political discourse should be changed requires something more than an appeal to the presumptive shared disvalue of cynicism; it requires an appeal to a foundational principle which we cannot justify failing to adhere to, a principle which would put an end to demands for justification of the proposition that our social institutions should take a form which does not systemically encourage (or even, for all intents and purposes, require) politicians to take a strategic attitude while nominally engaging in argumentative discourse.

The purpose of discourse ethics is to provide such a principle. To violate principle (D), as politicians do when they only pretend to act

communicatively, is literally *unjustifiable*, no matter how valuable the consequences may seem from some perspective or other. There is no way to justify politicians' foreclosing the possibility of genuine argumentation when they act strategically under the pretense of acting communicatively,³⁹ because justification requires taking up a communicative attitude.⁴⁰

4 Why some responses to Habermas have missed the target

Foucault is not always unambiguously hostile toward the idea that political judgment might rest upon a principle of some kind. In fact, his engagement with Habermas seems to have brought him to think that this might in fact be desirable. Foucault's biographer James Miller relates that Habermas once put his challenge directly to Foucault while visiting Paris, asking Foucault why he refused to give a philosophical account of the normative foundations of his critique – and that '[Habermas] was surprised at Foucault's response'. According to Miller, Foucault replied to Habermas: 'Look, [the issue of normative foundations] is a question I'm thinking about just now.'⁴¹ And we can see evidence of this in a late interview, when Foucault says that 'recent liberation movements suffer from the fact that they cannot find any principle on which to base the elaboration of a new ethics'.⁴² The problem, Foucault continues, is that those liberation movements are unable to find such a principle which is not derived from 'so-called scientific knowledge of what the self is, what desire is, what the unconscious is', which is to say, the very kind of knowledge which is the target of Foucauldian genealogy.

Miller reports that Foucault said to Habermas: 'You will have to decide, when I finish my *History of Sexuality*, how I will come out.'⁴³ Of course, the *History of Sexuality* was never finished, and Foucault never issued any positive statement on the issue of normative foundations. Nonetheless, some notable attempts have been made to identify normative foundations implicit in Foucault's texts. I will now examine four of these attempts, in order to show why, in light of what we have seen about what Habermas takes the proper form of normative foundations to be, each of them is inadequate to Habermas' challenge to Foucault. Finally, I will show why it is misguided, given Habermas' distinction between ethics and morality, and given the nature of Foucault's critical projects, to attempt to respond to Habermas by identifying normative foundations for the normative contents of those projects.

I will begin with Barry Allen's suggestion, which is that '[Foucault's] 'normative assumption' . . . is one which, with qualification, he shares with an entire tradition of modern political philosophers, from Locke and Adam Smith to Bentham and Isaiah Berlin'.⁴⁴ Foucault's foundational commitment, according to Allen, is to

. . . the claim that has always been associated with the ethos of modern individuality and the politics of liberal individualism: That political government is a second-order pursuit, which owes its rationale to the fact that there are other, more significant things to do with life than politics, whose purpose is to preserve the free space of individual choice.⁴⁵

This is, of course, a provocative suggestion, one which, for instance, makes Foucault out to be just the kind of thinker that Richard Rorty takes him to task for *not* being, i.e. one who does not politicize, and who actually opposes the politicization of, what an explicitly individualist liberal like Rorty takes to be the properly private projects of self-creation.⁴⁶

I will not provide a detailed answer here to the question whether Allen's suggestion can be borne out by Foucault's texts. Whether or not it can, what is pertinent for my purposes here is that the 'ethos of individualism' cannot be *foundational* in the sense required by Habermas precisely because it is an ethos, belonging to the ethical sphere, and not a moral principle. To construct a moral principle out of a Foucauldian ethos of individualism would require a basic, categorical opposition on Foucault's part to disciplinary power, so that his foundational principle would be that individuals should always be free from – or, at least, free in relation to – the forms of disciplinary power to which they are subjected.⁴⁷ But the latter is simply not a proposition that Foucault would endorse, because Foucault is not absolutely opposed to disciplinary power. Freeing ourselves in relation to the forms of disciplinary power to which we are subjected is a *value* for Foucault, but it is not a categorical imperative.

There is a further problem with Allen's suggestion: it seems to run up against the problem of cryptonormativity, since Foucault calls into question the ontological coherence of individuals, and suggests that this has political consequences. For instance, in a 1977 interview, Foucault at first indicates that he prefers a Hobbesian, individualist account of social struggle to the Marxist picture of struggle between classes: 'I would say it's all against all. . . . We all fight each other.'⁴⁸ But then he adds: 'And there is always within each of us something that fights something else.' When the interviewer asks him whether this means that in his view 'there are only ever transitory coalitions . . . [of which] strictly speaking individuals would be the first and last components', Foucault emphasizes 'individuals, or even sub-individuals'.⁴⁹

Of course, one can be an ethical or political individualist while denying the ontological proposition that individuals are coherent, discrete entities. Allen, commenting on Freud's own assault on the notion that individuals are ontologically coherent, asks, 'What does it matter that ego is not master of its own house . . . for the great majority of people? . . . Does it make their circumstantially determined individuality less

interesting to them or their unconsciously circumscribed choices less real?' And he answers: 'Of course not.'⁵⁰ However, there is no getting around the fact that the political function of Foucauldian genealogy is precisely to undermine normative positions by demonstrating the constructedness of their assumptions – e.g. *Discipline and Punish* undermines approval of current penal practices by showing how accidentally they came into being.⁵¹

This brings us to the central point in Habermas' critique of Foucault. If the function of genealogy is to undermine normative positions, then it appears that Foucault the genealogist cannot consistently hold any normative position. Whatever political function his genealogies could have ought to be immediately called into question by the genealogical attitude. This is why, according to Habermas, Foucault's genealogies are cryptonormative, surreptitiously taking normative positions that the genealogist cannot take without self-contradiction. Habermas' charge only holds, however, if it is actually the case that nothing is exempt, by its very nature, from being undermined by Foucauldian genealogy. Michael Kelly offers a candidate for a Foucauldian normative foundation, to which I will now turn, which, according to Kelly, *is* by its very nature beyond the reach of genealogical critique.

Kelly seizes upon Foucault's suggestion, in a late interview, that 'freedom is the ontological condition of ethics',⁵² taking this alone to be a sufficient answer to Habermas' challenge. Noting Foucault's stipulation that 'power is exercised only over free subjects and only insofar as they are free',⁵³ Kelly writes:

Contrary to Habermas' claims, this presupposition of freedom is, first of all, not undermined by power, since power implies resistance which implies freedom; second, freedom is not 'crypto', for Foucault explicitly understands it as 'the ontological condition of ethics'; third, it is justified, not merely as a mode of power, but as a constitutive feature of modernity.⁵⁴

While this is a formally ingenious response to Habermas, it suffers from a basic category error: it offers an *ontological* condition where a *normative* foundation is needed. That we are always free wherever power, in Foucault's sense, is exercised over us in no way entails that we are under an *imperative* to exercise that freedom; our freedom *just is* exercised when power is exercised over us. Foucauldian power works on us *through* our exercise of our freedom – e.g. the panopticon works (when it works) not by forcing prisoners to behave in a certain way but by bringing them to *choose* to modify their behavior; the '*dispositif*' of sexuality works on us not by forcing us to engage in any particular activity, but by presenting us with a range of sexual possibilities. But all this means is that the situation in which disciplinary power is exercised over us is always an ethical one: it is a situation in which we cannot avoid choosing

whether to go along or to resist. Whether we *should* go along or resist is a separate matter, and one which depends on the particular circumstances.

It is true that freedom as a *value* does seem to be at the heart of the Foucauldian ethic: genealogy is supposed to free us from the grip of ideas, and the institutions founded on them, the existence of which we had assumed to be necessary, by showing their historical contingency. In showing that certain courses of action are not necessary, genealogy opens up possibilities for action – it makes us freer. Or perhaps it would be more precise to say that it makes us more conscious of our freedom. Foucault's genealogy of sexuality, for instance, makes us conscious of the freedom that we had all along, whether we knew it or not, to either resist or go along with the disciplinary power that would have us construct ourselves as the subjects of an innate sexuality. The quest for this kind of freedom motivates Foucauldian genealogy, and in that sense, we might say that it is foundational to genealogy. But it is not a foundation of the form required by Habermas. Like any ethical value, it is subject to question, in particular circumstances and in general. Why, generally speaking, *should* we quest after the kind of freedom that Foucault seeks? Why, in particular, should, say, *prisoners* quest after that kind of freedom in relation to the punitive institutions to which they are subjected? These are clearly legitimate questions, which goes to show that an appeal to the value of freedom cannot bring a non-arbitrary end to demands for justification.

Habermas, of course, believes that the principles of his discourse ethics constitute the *only* non-arbitrary end to demands for justification; any demand for justification that cannot end with principle (D) simply cannot have a non-arbitrary final answer. The range of demands for justification that can end with principle (D) is, however, very limited. And this, as it will turn out, is the problem with James Johnson's response on Foucault's behalf to Habermas' challenge.

Johnson argues that, at least beginning with *Discipline and Punish*, not only were Foucault's political judgments founded on certain principles, but those foundational principles were essentially the same as Habermas':

What Foucault seems to argue [in *Discipline and Punish*] is that disciplinary power is *normatively objectionable* precisely *because* . . . it obliterates the sorts of extant communicative relation that, potentially at least, could promote social relations characterized by equality, symmetry, and reciprocity.⁵⁵

According to Johnson, 'Foucault portrays power relations as objectionable because they subvert relations of communication, relations of the sort that – if more fully specified – might sustain the vision of political agency that is implicit in . . . dialogical ethics'.⁵⁶

Johnson calls his interpretation of Foucault ‘unfashionable’, and, on the face of it, it appears to be a rather dubious one. It is easier to read Foucault to be saying that, because regimes of truth are constituted by power relations, communicative action is just another kind of strategic action. Such a position would seem to leave no room for discourse ethics. But Foucault, commenting on Habermas’ distinction between communicative and strategic action, says something which lends credibility to Johnson’s argument:

It is necessary to distinguish power relations from relationships of communication. . . . No doubt communicating is always a certain way of acting upon another person or persons. But the production and circulation of elements of meaning can have as their objective or as their consequence certain results in the realm of power; the latter are not simply an aspect of the former.⁵⁷

On the other hand, in another late interview, Foucault directs the following statement squarely against Habermas: ‘the idea that there could exist a state of communication that would allow games of truth to circulate freely, without any constraints or coercive effects, seems utopian to me.’⁵⁸ The apparent incompatibility of this view – which is central to Foucault’s critical project – with discourse ethics seems as if it would render ‘cryptonormative’ any adherence to the principles of discourse ethics on Foucault’s part.

However, I do not think that this is actually the case. I submit that two cases of conceptual imprecision, rather than a fundamental substantive disagreement, account for the apparent impasse between Foucault and Habermas. First, the kinds of ‘constraints’ and ‘coercive effects’ Foucault is talking about in the passage just cited are very different from the kinds of constraint and coercion that Habermas is concerned with when he criticizes the displacement of communicative by strategic action. The coercive forces Habermas is concerned with are those basically *material* forces – the ultimately physical force of the state, and the market forces that determine who will have the resources to pursue their projects – that impinge on the sphere properly belonging to communicative action, where the only permissible force is ‘the force of the better argument’. Foucault, however, is concerned with precisely the latter kind of force, including the forces that *make* some arguments better (i.e. more acceptable, more easily justified) than others by supporting a certain ‘economy of truth’.⁵⁹ Nothing in Habermas’ theory compels him to deny that those forces exist, or that it may be legitimate and worthwhile to examine and criticize them.⁶⁰ Conversely, that there may be problematic forces immanent in the field of argumentation, even when strictly strategic forces are excluded, does not mean that the Habermasian project of protecting the sphere of communicative action necessarily fails. The

forces Foucault is concerned with do not produce the social pathologies Habermas is concerned to prevent or cure, nor are they proscribed by the principles of discourse ethics. They simply present a different *kind* of problem, one that requires different bases of criticism.

Second, it is misleading to generalize about ‘states of communication’ as Foucault does in the passage cited. The states of communication between, say, members of opposing political parties, or the heavily mediated state of communication between a politician and the public, are very different from the state of communication that, say, we may suppose existed between Foucault and Habermas in their meeting reported by Miller. The latter kind of state of communication, presumably, is also the one intended by Foucault in his relationship with his readers. Foucault’s texts are, certainly, designed to have a performative effect – they are designed to loosen the conceptual hold that certain institutions have over us – but they do so by developing in their readers an *understanding* of those institutions. Of course Foucault’s discourse is intended to have ‘effects of power’ – it is meant to lead us ‘to think and act differently’. But such is the case with any political critique, or any argument at all, including Habermas’. The question is whether those effects of power are intended to come about through a fair assessment of arguments and evidence.

And so we must ask: is that what Foucault intends? As we saw above, the principles of discourse ethics are binding only on those engaged in argumentation; they do not require us to enter into argumentation in the first place. This being the case, Habermas’ charges against Foucault would fail if Foucault did not presume to engage in argumentative discourse. If he does not, then it would be a mistake to evaluate Foucault’s work according to the standards of discourse ethics, or, more generally, to criticize Foucault’s work for lacking normative foundations: normative foundations are irrelevant if one is not concerned to justify one’s judgments argumentatively.⁶¹ Habermas concedes that this escape route is open to Foucault, and that Foucault will elude his criticism ‘if we change the frame of reference and no longer treat [his] discourse as philosophy or science, but as a piece of literature’.⁶² Some of Foucault’s comments may lead us to believe that he does mean his texts to be ‘expressive’ (which is Habermas’ term for non-argumentative ‘literature’ which only manifests the writer’s own point of view⁶³) rather than argumentative. For instance, in two interviews, he refers to his major works as ‘fictions’.⁶⁴ But some complex philosophical issues lie behind that label. On one hand, Foucault says in one of those interviews, ‘I make use of the most conventional methods: demonstration or, at any rate, proof in historical matters, textual references, citation of authorities, drawing connections between texts and facts’, and ‘from this standpoint, what I say in my books can be verified or invalidated in the same

way as any other book of history'.⁶⁵ On the other hand, he says a little further on, 'The essential thing is not in the series of those true or historically verifiable findings but, rather, in the experience that the book makes possible. Now, the fact is, this experience is neither true nor false.'⁶⁶ Thus he says that he thinks of *Discipline and Punish* as 'an experience book, as opposed to a truth book or a demonstration book'.⁶⁷ Similarly, in the other interview where Foucault characterizes his texts as fictions, he suggests that he hopes they will have 'effects of truth' such that they will *become* true in the future.

These remarks evidence a certain confusion about truth, which Foucault readily admits to: 'The problem of the truth of what I say is a very difficult one for me; in fact, it's the central problem. That's the question I still haven't answered.'⁶⁸ The question, as I see it, is that of the relationship between an 'economy of truth' and (in various senses) the truth itself.⁶⁹ At the time of these two interviews, Foucault seems to have disowned his earlier view that 'it is always possible one could speak the truth in a void' which we find in his remarks on Mendel in 'The Discourse on Language': 'Mendel', Foucault writes there, 'spoke the truth, but he was not *dans le vrai* ['within the true'] of contemporary biological discourse'⁷⁰ – that is, there was as yet no economy of truth within which Mendelian statements were redeemable currency. This earlier view, as it happens, strikes me as the correct one, though Foucault was also correct to recognize that the distinction between a statement's being true and its being redeemable within an economy of truth calls for philosophical problematization. That being as it may, however, Foucault's (commendable) confusion about the nature of truth in no way entails that he does not seek to *tell the truth* in his books – the ancient Greek figure of the *parrhesiast*, the one with the courage to speak a dangerous truth, being, after all, valorized by Foucault in some late lectures⁷¹ – and to reach an *understanding* with his readers, in the way that Habermas requires of participants in argumentation. In an interview given just before his death, Foucault is explicit and unequivocal on this point. Asked why he does not engage in polemics, Foucault responds:

A whole morality is at stake, the morality that concerns the search for truth and the relationship to the other. In the serious play of questions and answers, in the work of reciprocal elucidation, the rights of each person are in some sense immanent in the discussion. They depend only on the dialogue situation.⁷²

For the polemicist, on the other hand, Foucault continues,

... the game consists not of recognizing this person as a subject having the right to speak but of abolishing him, as interlocutor, from any possible dialogue; and his final objective will be not to come as close as possible to a difficult truth but to bring about the triumph of the just cause he has been manifestly upholding from the beginning.

Here, then, there can be no doubt: at the end of his career, at least, Foucault not only accepts but vigorously promotes the principles of discourse ethics. Not only does he accept that participants in argumentation owe it to each other to seek the truth cooperatively and not to dissimulate for the sake of gaining an advantage, but he also disdains those who abandon the communicative field of argumentation for the strategic field of polemic. But what about the problem of cryptonormativism? Of course, given that Foucault *explicitly* endorses the principles of discourse ethics, his position could not, on that score, be charged with *cryptonormativism*; if there is a contradiction between *this* normative assumption and his genealogical approach, it is out in the open. So, the question now is, is there such a contradiction? Given Foucault's genealogical approach, is he *entitled* to hold that there are rights immanent in discussion? Why should the very idea of the quest for truth, involving the open exchange of reasons and evidence, be immune from genealogical critique? Does Foucault need to have dropped his genealogical approach – as, indeed, the commonly accepted division of Foucault's career into 'archaeological', 'genealogical', and 'ethical' periods might suggest that he in fact did – in order to endorse the principles of discourse ethics without contradiction?

5 Why Foucauldian genealogy and discourse ethics are not incompatible

For an answer to the questions I have just posed concerning the compatibility of Foucauldian genealogy and discourse ethics, we would best begin by looking at the first sentence of Foucault's statement on genealogical methodology, 'Nietzsche, Genealogy, History': 'Genealogy is gray, meticulous, and patiently documentary.'⁷³ Genealogy works by patiently documenting things that actually happened: it sets out to tell the truth. The whole point of genealogy is to help us to see what accidents of history came together to produce apparently inevitable social formations like modern penology and sexuality. Take the example of *Discipline and Punish*, which is Foucault's most fully realized genealogy. That work is, quite obviously, replete with documented *facts* about the history of punishment and social control, and on the basis of those facts it makes reasoned inferences about the meaning of that history. Critics can argue, and in fact they have argued, that certain relevant facts are missing or that the inferences are faulty. But this is exactly what is to be expected in a process of genuine argumentation; it goes to show that genealogy does operate on the field of reasoned argumentation, and does not oppose itself to reasoned argumentation in general.

Foucault complains in an interview that

... one has often tried to blackmail all criticism of reason and every test of the history of rationality so that one either recognizes reason or casts it into irrationalism – as if it were not possible to write a rational criticism of rationality.⁷⁴

It strikes me that this formulation evidences a kind of confusion similar to that about truth, but that what Foucault is getting at is that his project is to rationally criticize particular *rationalities*, where the latter are not anything like *forms of reasoning* but are rather *canons of reasons* – for instance, the canon of reasons purporting to explain human behavior with reference to an innate sexuality. Moreover, Foucauldian genealogy can only make its claims against particular canons of reasons on the basis of completed genealogies which have actually shown (or, at least, have provided good reasons to believe) that the credibility of those reasons is founded on certain historical accidents. Any given employment of the genealogical method, of course, requires the *hypothesis* that the genealogy's target is the product of an accidental confluence of historical circumstances. But this can only ever be a provisional methodological hypothesis; it is not – or at least there is nothing in Foucault to say that it is, and there is nothing about the genealogical method itself that requires us to take it to be – an a priori metaphysical claim.

Réal Fillion helpfully responds to the perception of critics such as Alasdair MacIntyre that Foucault's project is the totalizing one of being a *genealogical subject* – constantly taking a genealogical approach to everything, undermining every conceivable position and thereby leaving himself in the untenable position of having no place to stand – by asking, 'In producing genealogies, does one thereby become a genealogist (*someone* who produces genealogies)? Is not the point of producing genealogies the production of genealogies (and not genealogists)?'⁷⁵ Foucauldian genealogy is not a way of life, and it is not an all-encompassing philosophy – it has nothing in common, for instance, with a self-devouring skepticism claiming to know that no knowledge is possible. Genealogy is rather a *method*, a method which can be taken up by someone who is committed to the principles of discourse ethics, and which proceeds by adducing evidence in the manner of reasoned argumentation. As such, it *cannot* undermine the principles of discourse ethics; it *pre-supposes* and indeed *relies* on them.

It is useful here to recall the point made above about the *practicality* of Habermas' critical theory. Habermas requires social critics to make their criticisms effective by giving *reasons* for those criticisms, such that they cannot simply be dismissed by the critics' argumentative opponents; if those opponents do not want to leave the field of argumentation and settle the difference by resorting to some force other than that of the better argument, then they must either show why the critics' reasons are

faulty or accept that the critics' proposals should be implemented.⁷⁶ If the very idea of Foucauldian genealogy *did* make it incompatible with discourse ethics – in other words, if the discursive action of genealogy were strategic rather than communicative – then anyone who did not already agree with the positions suggested by particular genealogies (or who disagrees with the positions they attack) would be fully justified in dismissing it outright. But there simply is nothing in the idea of Foucauldian genealogy that sets it at odds with discourse ethics.

Does this mean, finally, that Johnson's 'unfashionable' interpretation is right? No – at least, not entirely. While Johnson is right in that Foucault is indeed committed to the principles of discourse ethics, those principles are not *foundational* to the political judgments discernible in his work. The judgment that, for instance, we ought to free ourselves from (or in relation to) our sexual identities cannot be justified by appeal to the principle that participation in argumentative discourse requires us to evaluate in good faith the reasons advanced by our interlocutors and to be ready to modify our commitments accordingly. Meanwhile, though the principles of discourse ethics could serve as a final justification of the judgments Johnson cites in *Discipline and Punish*, those judgments are peripheral to the most important judgments discernible in *Discipline and Punish*, which are in the same vein as those motivating *The History of Sexuality*: the danger, the potential evil, that Foucault sees in the modern prison, and extending from the prison throughout modern social institutions, lies in what panoptic technologies do to people (either by design or by accident) outside of, and prior to, any potentially communicative situation. Panopticed subjects are, in principle, perfectly capable of participating in argumentative discourse that satisfies Habermas' requirements. Moreover, it is beside the Foucauldian point whether they consent to being panopticed – remembering that Foucauldian power works on us through our exercise of our freedom, panoptic technologies are all the more effective, and all the more dangerous, if we consent to their operation on us. Our free acquiescence in our being panopticed would not make it all right, on Foucauldian terms; it would be, rather, a Foucauldian nightmare.

Fraser writes that 'without a non-humanist ethical [i.e. in Habermas' terms, moral] paradigm' in place of the humanist one he rejects, '[Foucault] cannot answer the question, Why should we oppose a fully panopticed, autonomous society?'⁷⁷ Indeed, he cannot, if answering the question means producing a *final* answer, one beyond which further justification is neither necessary nor possible. All he can do is appeal to our shared sense, insofar as we share it, that such a society *is* a nightmare, that autonomy is not *valuable* if it is produced by engineering.⁷⁸ His judgments against panoptic technologies, against *dispositifs* such as that of sexuality which tie individuals to their identities, are, in

Habermas' terms, not moral but ethical. Those judgments appeal to a certain modern ethos – something of which is captured by each of Allen's and Kelly's characterizations as being defined by, respectively, individuality and freedom – which is tied to a widespread, shared self-conception among modern subjects, according to which an important part of what we are is that we ourselves are responsible for what we are. There is, for Foucault, *but also for Habermas*, nothing else that can be appealed to, assuming that people are not manipulated, in a manner inconsistent with the principles of discourse ethics, into consenting to the panoptification of society.

6 Conclusion: morality, ethics, and politics

Given Habermas' distinction between morality and ethics, we may say that any political issue has both moral and ethical aspects; the moral aspects are procedural and are to be judged with reference to principles, while the ethical aspects are substantive and are to be judged with reference to values. Political critique can, accordingly, be either morally or ethically oriented (or both). Habermas' critique, though ethically motivated (i.e. by a concern with 'social pathologies'), is morally oriented. It has to do with procedures. If a fully panoptified society were arrived at through the proper procedures – which is to say, through the free consent of everyone involved after open deliberation – then Habermasian critique would have nothing to say against it. Foucault's critique, on the other hand, is ethically oriented. It has to do with substantive matters relating to what we consider to be valuable ways to live. It does not presume to *tell* us what valuable ways to live are; rather, it uncovers some ways, not clearly apparent otherwise, in which the operation of certain social institutions on us runs counter to beliefs that many of us share about how it is valuable for us to live. On Habermas' own terms, to demand normative foundations for this kind of critique is to commit a category error.

The purpose of Habermas' morally founded project is to define the procedural terms according to which substantive political arguments and decisions ought to be made. As long as Foucault adheres to those terms – and, as we have seen, there is no reason to believe that he does not and every reason to believe that he does – while he makes his substantive contributions to political debates, Habermas can demand nothing more of him.⁷⁹

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Notes

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- 1 Barry Allen, ‘Foucault and Modern Political Philosophy’, in Jeremy Moss (ed.) *The Later Foucault: Politics and Philosophy* (London: Sage, 1998), pp. 164–98 (164); hereafter cited as FMP.
- 2 Jürgen Habermas, *The Philosophical Discourse of Modernity*, trans. F. Lawrence (Cambridge, MA: MIT Press, 1987), p. 276; hereafter cited as PDM.
- 3 Habermas, PDM, p. 284.
- 4 Allen, FMP, p. 164.
- 5 These writers include several contributors to Samantha Ashenden and David Owen (eds) *Foucault Contra Habermas* (London: Sage, 1999), particularly James Tully; Wendy Brown, ‘Genealogical Politics’, in Moss (ed.) *The Later Foucault*; and Réal Fillion, ‘Freedom, Responsibility, and the “American Foucault”’, *Philosophy and Social Criticism* 30(1) (2004): 115–26; hereafter cited as FRA.
- 6 Brown, ‘Genealogical Politics’, p. 46.
- 7 In an interview, Foucault says: ‘I am quite interested in [Habermas] work, although I know he completely disagrees with my views. While I, for my part, tend to be a little more in agreement with what he says.’ Michel Foucault, ‘The Ethics of the Concern for the Self as a Practice of Freedom’, in Michel Foucault, *Ethics: Subjectivity and Truth*, ed. Paul Rabinow (New York: the New Press, 1997), pp. 281–302 (298).
- 8 It should be noted that, on Habermas’ terms, discourse ethics is not an ethics at all but rather a moral theory. Habermas points out that ‘it would be more accurate to speak of a “discourse theory of morality,” but [he] retain[s] the term “discourse ethics,” which has become established usage.’ Jürgen Habermas, *Justification and Application: Remarks on Discourse Ethics*, trans. Ciaran Cronin (Cambridge, MA: MIT Press, 1993), p. vii; hereafter cited as JA.
- 9 *ibid.*, p. 176.
- 10 *ibid.*, p. 126.
- 11 *ibid.*, p. 127.
- 12 *ibid.*
- 13 Jürgen Habermas, *Autonomy and Solidarity*, ed. Peter Dews (London: Verso, 1986), p. 171.
- 14 See note 6.
- 15 Michel Foucault, ‘On the Genealogy of Ethics’, in Foucault, *Ethics: Subjectivity and Truth*, pp. 255–80 (263); hereafter cited as OGE.
- 16 *ibid.*
- 17 Michel Foucault, ‘Politics and Ethics: an Interview’, in Michel Foucault, *The Foucault Reader*, ed. Paul Rabinow (New York: Pantheon, 1984), pp. 373–80 (378–9).
- 18 Michel Foucault, ‘The Return of Morality’, in Michel Foucault, *Politics*,

- Philosophy, and Culture: Interviews and Other Writings, 1977–1984*, ed. Lawrence D. Kritzman (New York: Routledge, 1988), pp. 242–54 (253–4); hereafter cited as ROM.
- 19 This sounds like a typically liberal concern, but liberals *are* typically concerned to keep separate ethics and *politics* – and this, as I will explain, is just what Foucault does not do.
- 20 Allen, FMP, p. 173.
- 21 Fons Elders (ed.) *Reflexive Waters: The Basic Concerns of Mankind* (London: Souvenir Press, 1974), pp. 173–4.
- 22 Jürgen Habermas, *The Theory of Communicative Action*, vol. I, *Reason and the Rationalization of Society*, trans. T. McCarthy (Boston, MA: Beacon Press, 1984), p. 25; hereafter cited as TCA-1.
- 23 *ibid.*, p. 286.
- 24 See Jürgen Habermas, *The Theory of Communicative Action*, vol. II, *Lifeworld and System: A Critique of Functionalist Reason* trans. Thomas McCarthy (Boston, MA: Beacon Press, 1987), pp. 383–96.
- 25 See Habermas, TCA-1, pp. 274–9.
- 26 See, for example, Habermas, JA, pp. 5–8.
- 27 Jürgen Habermas, *Moral Consciousness and Communicative Action*, trans. C. Lenhardt and S. Weber Nicholsen (Cambridge, MA: MIT Press, 1990), p. 65; hereafter cited as MCC.
- 28 *ibid.*, p. 66.
- 29 *ibid.*, pp. 79–82.
- 30 Karl-Otto Apel, ‘Is the Ethics of the Ideal Communication Community a Utopia? On the Relationship between Ethics, Utopia, and the Critique of Utopia’, in Seyla Benhabib and Fred Dallmayr (eds) *The Communicative Ethics Controversy* (Cambridge, MA: MIT Press, 1990), pp. 23–59 (42); hereafter cited as EIC.
- 31 *ibid.*
- 32 *ibid.*, p. 43.
- 33 However, as Habermas makes clear in a later article, where justification is concerned, principle (D) has priority (as, of course, it must, as the foundational principle of discourse ethics) over condition (U): condition (U) must be justified by appeal to principle (D). See Jürgen Habermas, ‘A Genealogical Analysis of the Cognitive Content of Morality’, in *The Inclusion of the Other*, ed. Ciaran Cronin and Pablo de Greiff (Cambridge, MA: MIT Press, 1998), pp. 43–4.
- 34 Apel, EIC, p. 46.
- 35 Habermas, MCC, p. 85.
- 36 *ibid.*, p. 86.
- 37 This, I think, is a fitting Habermasian response to Réal Fillion’s rejection of what he characterizes as Habermas’ demand of *accountability* and *consistency* from Foucault, which he attributes to a ‘discomfort [that] stems from a concern about the relevance of critique in the wider culture. . . . Unsure of the relevance of our “radical theorizing” (we know we are right, but is anyone listening?), we are especially sensitive to the standards and canons of consistency we apply to our work. We cannot afford to be both irrelevant and *frivolous*’; Fillion, FRA, p. 121. On Habermas’ terms, we

- cannot be, at the same time, both irrelevant and right, at least concerning substantive political matters, including the matters (as I will argue) Foucault's work is concerned with.
- 38 See, for instance, James Tully, 'To Think and Act Differently: Foucault's Four Reciprocal Objections to Habermas' Theory', in Ashenden and Owen (eds) *Foucault Contra Habermas*, pp. 90–142 (115).
 - 39 The point, of course, is not to blame politicians (who are, after all, not a separate, morally degenerate class of persons) for this; the point of the critical social theory *founded* on the moral philosophy is that modern societies are structured in ways that *compel* this kind of behavior.
 - 40 Note that it is not my purpose to *defend* Habermas' normative foundations. I am not convinced that the impossibility of justifying failure to adhere to the principles of argumentation *in general* entails that failure to adhere to those principles under some particular circumstances, and perhaps under quite a wide range of circumstances, cannot be justified. But that is beside the point of the present article.
 - 41 James Miller, *The Passion of Michel Foucault* (New York: Simon & Schuster, 1993), p. 339; hereafter cited as PMF.
 - 42 Foucault, OGE, p. 231.
 - 43 Miller, PMF, p. 339.
 - 44 Allen, FMP, p. 165.
 - 45 *ibid.*, p. 192.
 - 46 See Richard Rorty, *Contingency, Irony, and Solidarity* (New York: Cambridge University Press, 1989), pp. 61–6. Allen brushes off the most obvious objections thusly: 'If, as Oakeshott said of J. S. Mill, his work amounts to a muddled and unconfident exploration of the political theory of collectivism under cover of the rhetoric of individualism, one might say of Foucault, conversely, that his comprises a muddled and unconfident exploration of the political theory of individualism under cover of the rhetoric of radicalism.' Allen, FMP, p. 194.
 - 47 To be free in relation to a form of disciplinary power would be at least to be aware of how it works on one, such that one is able at least in principle to alter if not interrupt its working.
 - 48 Michel Foucault, 'The Confession of the Flesh', in Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, ed. Colin Gordon (New York: Pantheon, 1980), pp. 194–228 (208).
 - 49 The tension between Foucauldian genealogy's dissolution of the individual subject, and Foucault's actual career as an individual, is at the heart of Alasdair MacIntyre's critique of Foucault. See Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry: Encyclopaedia, Genealogy, and Tradition* (Notre Dame, IN: University of Notre Dame Press, 1990), pp. 32–57.
 - 50 Allen, FMP, p. 167.
 - 51 Though I cannot argue in detail for this view here, the role of 'power relations' in the construction of social institutions and the assumptions they rest on strikes me as overemphasized both by Foucault and, especially, his commentators, including Habermas. A power relation, for Foucault, is simply a relation in which some set of persons influences the actions of some other set of persons. Given that definition, the category 'power relations' has no

- special explanatory power, since every conceivable relation is, trivially, a power relation.
- 52 Michel Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom', in Michel Foucault, *Ethics: Subjectivity and Truth*, ed. Paul Rabinow (New York: The New Press, 1997), pp. 281–301, p. 284; hereafter cited as ECS.
- 53 Michel Foucault, 'The Subject and Power', in Michel Foucault, *Power*, ed. James D. Faubion (New York: The New Press, 2000), pp. 326–48, p. 221; hereafter cited as SP.
- 54 Michael Kelly, 'Foucault, Habermas, and the Self-Referentiality of Critique', in Michael Kelly, *Critique and Power: Recasting the Foucault/Habermas Debate* (Cambridge, MA: MIT Press, 1994), pp. 365–400 (382).
- 55 James Johnson, 'Communication, Criticism, and the Postmodern Consensus: an Unfashionable Interpretation of Michel Foucault', *Political Theory* 25 (1997): 559–83 (572); hereafter cited as CCP. Simon Thompson cites some of the same passages from *Discipline and Punish* as evidence that '[Foucault's] ethics is concerned with the specification of the conditions of possibility of reciprocal relations between subjects'. Simon Thompson, 'The Agony and the Ecstasy: Foucault, Habermas and the Problem of Recognition', in Ashenden and Owen (eds) *Foucault Contra Habermas*, pp. 195–211 (199–200).
- 56 Johnson, CCP, p. 572.
- 57 Foucault, SP, p. 217.
- 58 Foucault, ECS, p. 298.
- 59 See, especially, Foucault, 'Truth and Power', in Foucault, *Power/Knowledge*, pp. 109–33 (131–33).
- 60 What Habermas *is* compelled to deny is the implication Foucault sometimes seems to make, that the truth itself, as opposed to an 'economy of truth', is determined by power.
- 61 This position is in fact held by a number of commentators, including J. M. Bernstein, *Recovering Ethical Life: Jürgen Habermas and the Future of Critical Theory* (New York: Routledge, 1995), and Hubert L. Dreyfus and Paul Rabinow, 'What is Maturity?', in David Couzens Hoy, *Foucault: A Critical Reader* (New York: Basil Blackwell, 1986), pp. 109–21. Bernstein writes that '[Foucault's] books are meant to be *judged* as one would judge a work of art rather than raising a validity claim which could be vindicated by the force of better argument and outside the context of its inscription' (p. 166). In Dreyfus and Rabinow's interpretation, '[Foucault] uses language to shift what we see as our social environment'; openly rejecting communicative action and affecting a strategic attitude, Foucault 'positively embraces what Austin would call the perlocutionary effect of language as a means of moving us to concerted action' (p. 115).
- 62 Habermas, PDM, p. 337.
- 63 See, for instance, Habermas, TCA-1, p. 329.
- 64 Foucault, 'The History of Sexuality', in Foucault, *Power/Knowledge*, pp. 183–93 (193); Michel Foucault, 'Interview with Michel Foucault', in Michel Foucault, *Power*, ed. James D. Faubion (New York: the New Press, 2000), pp. 239–97 (242); hereafter cited as IMF.

- 65 *ibid.*, p. 242.
- 66 *ibid.*, p. 243.
- 67 *ibid.*, p. 246.
- 68 *ibid.*, p. 242.
- 69 Foucault denies experience the status of truth because the experiences he writes out of, and hopes to convey to his readers, are precisely the sort which have no currency in present economies of truth. I would want to say, on Heideggerian grounds, that experience, as our opening to being and being's opening to us, is the most *fundamental* kind of truth. But the examination of the relationship between this Heideggerian view of truth and Foucault's own (which I take to be an extremely important question, given Foucault's proclamation that Heidegger was always, for him, 'the essential philosopher' [Foucault, ROM, p. 250], and the unorthodox ways in which each of them problematizes the notion of truth) must await another article.
- 70 Michel Foucault, *The Archaeology of Knowledge and 'The Discourse on Language'*, trans. A. M. Sheridan Smith (New York: Pantheon, 1972), p. 224.
- 71 See Michel Foucault, *Fearless Speech*, ed. Joseph Pearson (Los Angeles: Semiotext(e), 2001).
- 72 Michel Foucault, 'Polemics, Politics, and Problematizations', in Michel Foucault, *Ethics: Subjectivity and Truth*, ed. Paul Rabinow (New York: the New Press, 1997), pp. 111–20 (112–13).
- 73 Michel Foucault, 'Nietzsche, Genealogy, History', in Michel Foucault, *Aesthetics, Method, and Epistemology*, ed. James D. Faubion (New York: the New Press, 1998), pp. 369–91 (369).
- 74 Michel Foucault, 'How Much Does it Cost for Reason to Tell the Truth?', in Michel Foucault, *Foucault Live: Collected Interviews, 1961–1984*, ed. Sylvère Lotringer (New York: Semiotext(e), 1996), pp. 348–62 (353).
- 75 Fillion, FRA, p. 119.
- 76 One must acknowledge, of course, that participants in political discourse are perhaps *normally* only on the border of the field of argumentation. But it must also be acknowledged on the other hand that voters in liberal democracies – and, indeed, politicians themselves – frequently change their minds on political matters, and that they *want* to do so only, and whenever, they find good reasons for doing so. Although there is a strong incentive to dissimulate in democratic politics, there is also a strong incentive – it is actually, in the long run, safer – to have good reasons for one's positions.
- 77 Nancy Fraser, 'Michel Foucault: a "Young Conservative"?', in Nancy Fraser, *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989), pp. 35–54 (3).
- 78 Think of Robert Nozick's experience machine thought experiment, proposed in support of the thesis that our experiences are not valuable if they are simply given to us, which strikes me as so essential to the libertarianism of *Anarchy, State, and Utopia*: the appeal of that thought experiment rests solely on a shared ethical sensibility. Plugging in to the machine is simply contrary to the self-conceptions of most modern individuals; no final *reason* can be given that it is wrong to plug in.
- 79 Habermas does say that we must not confuse substantive contributions to

political debates with *philosophy*. Habermas, JA, p. 176. I tend to agree with him on this point, but by no means does Foucault ever present his works as purely philosophical ones: rather, they develop certain philosophical insights into the nature of power, knowledge, etc., in relation to their practical, historical significance.