

Foucault, anti-humanism and human rights

Ben Golder

Abstract

Responding to recent engagements with Foucault, and in part to the provocation of this conference ('... antifoundational humanism ...'), this paper argues that in his late work Foucault does not submit to the 'moral superiority' of humanism and introduce a liberal humanist subject. Rather, Foucault's late investigations of subjectivity constitute a continuation and not a radical departure from his earlier positions on the subject. Such a reading helps us to assess Foucault's late supposed 'embrace' of, or return to, human rights – which is here re-interpreted as a critical anti-humanist engagement with human rights, conducted in the name of an unfinished humanity. In this way, the paper engages not only with the way in which mainstream accounts of human rights tend to assimilate anti-foundational and post-structural challenges, but also with the quality of Foucault's own political legacy and future in the age of human rights, 25 years on.

Introduction

According to a curious, but persistent, reading, Foucault finally succumbed to the ineluctable lure of the subject in his 'late' work. In his studies of ancient Greek and imperial Roman ethics, and in his contemporary political interventions, so goes the story, Foucault abandoned – or, in more nuanced renditions, progressively relinquished – his archaeological and genealogical critique of the subject. According to this reading, what emerged phoenix-like from the embers of Foucault's exhausted genealogical project was none other than a liberal humanist subject – a pre-discursive, fully autonomous and unconstrained subject 'beyond power and knowledge', as one recent teller has it (Paras 2006). Crucially, one of the political effects of this putative revision of Foucault's views on power and subjectivity (and something entirely coincident with it) is, we are told, his unqualified 'embrace of human rights' principles (Dosse 1997, p. 336), indeed even his 'shocking ... advocacy' (Paras 2006, p. 12) of such. Enter the triumphant subject of human rights; exit, somewhat confusingly, the genealogy of power/knowledge.

The above reading is of course curious, but not by any means illegitimate (cf. Foucault 1988, p. 52), because of what it leaves out – it elides Foucault's own story; or, rather, rhetorically organises it into a very different narrative: the narrative of Foucault's recantation, his domestication, his recusant return to the liberal fold. How are we to reconcile Foucault's surprising 'deathbed conversion' (Schmidt & Wartenburg 1994, p. 287) to liberalism with his earlier trenchant critiques of humanism and indeed with his famous evocation of man's imminent erasure, 'like a face drawn in sand at the edge of the sea' (Foucault 1970, p. 387)?

One way is of course the way I have been describing above as the curious teleologic of Foucault's neo-humanism (Wolin 2006; Paras 2006), as if Foucault were simply working through and jettisoning these earlier radical positions before arriving, exhaustedly, at his Damascene 'capitulation in the face of the moral superiority of humanism' (O'Leary 2002, p. 117). Against this story, what I propose to do in this short paper is simply to broach a counter-narrative. In the re-reading I sketch here, Foucault's late work does not constitute a reversal of his previous positions but rather a development and a refinement of them. I argue that, in turn, this interpretation helps us to read Foucault's late engagement with human rights discourse otherwise – not as an unqualified acceptance of its orthodox liberal humanist assumptions but precisely as a critique of them, in the name of another human rights. In my

reading, what Foucault offers us in his late interventions into human rights discourse is less a humanist mea culpa than an ethic of critical engagement with human rights, with-in and against human rights, in the name of an unfinished humanity. Present constraints mean I can only really hint at the argument here, but I shall try to do so in two maddeningly brief steps: a summary and critique of the neo-humanist reading of subjectivity in Foucault and a relating of Foucault's (consistent, not revoked) anti-humanism to a heterodox thinking of human rights.

The neo-humanist reading

The curious reading I have been discussing is, curiously, by no means a new one (see for example, Dews 1987, 1989; Merquior 1985). Its most recent articulation is in Eric Paras's book *Foucault 2.0: beyond power and knowledge* (2006), and I shall take this instance here as exemplary. Condensing what is a long, intellectual historical engagement with Foucault's work, Paras argues that around the (recently translated) Collège de France lectures on *The birth of biopolitics* Foucault began, 'through a reflection on liberalism', to foreground the subject and indeed '[l]iberalism seemed to also be a detour to rediscover the individual outside of the mechanisms of power' (Fontana, cited in Paras 2006, p. 104). Thenceforth, focusing on the individual's ethical capacity to work upon itself developed in the lecture courses *Subjectivity and truth and the hermeneutic of the subject* (and of course published in volumes 2 and 3 of the *History of sexuality* project), Foucault began to introduce what Paras calls a "pre-discursive subject" ... a subjective nucleus that precedes any practices that might be said to construct it, and indeed one that freely chooses among those practices' (2006, p. 14). Whilst studiously confining himself to the level of practices of subjectivation, Paras argues that from this point on, contra his well-known positions in *Discipline and punish* and the first volume of the *History of sexuality*, Foucault did in fact 'tacitly assume some kind of already-present subject that could act upon itself' (Paras 2006, p. 52).

Condensing my own response to this reading, a response which is itself not in all respects new (cf. Deleuze 1999), I would want rather to insist upon a continuity within Foucault's thought than a chasmic break between the genealogies of the 1970s and the ethical work that succeeds it. Such a change of emphasis is of course Foucault's own conceptualisation of his shift (e.g. 1997b, p. 225). Paras, Dews and other critics of Foucault's late work misconceive what looks like a 'return of the subject' in the later work in part because they misread the

earlier work as having proposed, against Foucault's subsequent clarification, 'a system of domination that controls everything and leaves no room for freedom' (1997a, p. 293). Rather, as a reading of (for example) *Discipline and punish* makes clear, matters were all along much more nuanced than this (1991, pp. 202–203 and see 1978, p. 143). Equally, the later work does not pre-suppose an utterly autonomous subject with some primal, pre-existent capacity for self-rearticulation. As Judith Butler puts it, '[t]he self ... [continues to] form ... itself, but it forms itself within a set of formative practices that are characterized as modes of subjectivations' (p. 320; cf. Foucault 1997a, p. 291). According to this reading, the ethical exercise of power over oneself and the exercise of (disciplinary, biopolitical) power over others emerge as different aspects of a 'unitary' Foucauldian understanding of subjectivity. The late Foucauldian subject is hence not a stable metaphysical substance, a *subjectum* fully present to itself, but rather remains a conflicted effect of power-knowledge relations, an always achieved, always unravelling subject-effect, its capacity for re-articulation the fraught legacy of discourses and institutions whose commands are variously repeated, obeyed, appropriated and transgressed (cf. Butler 2000; and on transgression see Golder & Fitzpatrick, 2009, pp. 93, 131). In short, the late Foucauldian subject remains very much a product of power/knowledge.

Foucauldian human rights contra humanism

Understanding the subject as the scene and effect of politics helps us to re-interpret Foucault's deployment of rights discourse (on asylum, on prison reform, on sexual ethics) in the years after his cryptic call for a 'new right' (2003, p. 40) not as tired reinventions of the same but as figurations of (... gestures towards ...) something different. Foucault continues to resist the metaphysical closure of the human imported by liberal humanism and its rights project as the protection of the already, ineluctably given. If for him humanism represents an 'extraordinary diminishment of human being' (Bernauer 2004, p. 88) then Foucault proposes in its stead a thoroughly contingent human, 'one' ever open to (juridical) reinscription:

[M]en [sic] have never ceased to construct themselves ... to continually displace their subjectivity, to constitute themselves in an infinite, multiple series of different subjectivities that will never have an end and never bring us in the presence of something that would be 'man'. (Foucault 2000, p. 274)

This critical ontology affirms the ‘need to produce something that doesn’t exist yet, without being able to know what it is’ (Foucault 2000, p. 275). Proceeding without cognition or measure, Foucault’s anti-humanism is entirely consistent with an orientation to human rights that insists upon plurality, difference and the constant interrogation of the extant limits of the human. As the above quotation and a myriad of secondary sources attest (see, for example, Ramazanoglu 1993), Foucault is himself not immune from feminist (and indeed postcolonial) critique on the grounds of a certain foreclosure of what it means to be human. Nevertheless this interrogation remains apposite:

Through these different practices – psychological, medical, penitential, educational – a certain ideal or model of humanity was developed, and now this idea of man has become normative, self-evident, and is supposed to be universal ... This does not mean that we have to get rid of what we call human rights or freedom, but that we can’t say that freedom or human rights has to be limited at certain frontiers ... I think that there are more secrets, more possible freedoms, and more inventions in our future than we can imagine in humanism. (cited in Martin 1988, p. 15)

Crucially for the Foucauldian anti-humanist engagement with human rights, which I have only managed to hint at here, the definitive encapsulation of the human – a metaphysical circumscription that appears in ritual question-begging form in most orthodox human rights texts in the mystifying form: ‘Human rights are the rights we have by virtue of being human’ – represents not the proper ground of human rights but rather its terminal limit. The undoing of the grounds of humanity, which Foucault’s genealogy, I have been arguing, continues into the late work and which informs his engagement with human rights, is in fact entirely consistent with an affirmation of human possibility. Such a politics is both antifoundational, undetermined and necessarily unfinished – in short, the ‘death of man’ represents the condition of possibility of (another) human rights.

Ben Golder is a lecturer in the Faculty of Law, UNSW, with an interest in legal theory and post-structuralist philosophy. He has written several articles on Foucault and is, with Professor Peter Fitzpatrick, the author and editor, respectively, of *Foucault's law* (Abingdon, Routledge, 2009) and *Foucault and law* (under contract with Ashgate, to come out in 2010).
b.golder@unsw.edu.au

References

- Bernauer, J 2004, 'Michel Foucault's philosophy of religion: an introduction to the non-fascist life', in *Michel Foucault and theology: the politics of religious experience*, eds J Bernauer & J Carrette, Ashgate, Aldershot.
- Butler, J 2004, 'What is critique? An essay in Foucault's virtue', in *The Judith Butler reader*, eds S Salih & J Butler, Blackwell, Oxford.
- Butler, J 2000, *Antigone's claim: kinship between life and death*, Columbia University Press, New York.
- Deleuze, G 1999, *Foucault*, trans. Seán Hand, Continuum, London.
- Dews, P 1989, 'The return of the subject in late Foucault', *Radical Philosophy*, vol 51, pp. 37–41.
- Dews, P 1987, *Logics of disintegration: post-structuralist thought and the claims of critical theory*, Verso, London.
- Dosse, F 1997, *History of structuralism, volume 2: the sign sets, 1967–present*, trans. D Glassman, University of Minnesota Press, Minneapolis.
- François, D 1997, *History of structuralism, volume 2: the sign sets, 1967–present*, trans. D. Glassman, University of Minnesota Press, Minneapolis.
- Foucault, M 2003, '*Society must be defended*': lectures at the Collège de France 1975–76, trans. D. Macey, Allen Lane, London.
- Foucault, M 2000, 'Interview with Michel Foucault', trans. R. Hurley et al, in *Essential works of Foucault 1954–1984, vol 3: power*, ed. JD Faubion, The New Press, New York.
- Foucault, M 1997a, 'The ethics of the concern for self as a practice of freedom', trans. R. Hurley et al, in *Essential works of Foucault 1954–1984, vol 1: ethics, subjectivity and truth*, ed. P Rabinow, Penguin, Harmondsworth.
- Foucault, M 1997b, 'Technologies of the self', trans. R. Hurley et al, in *Essential works of Foucault 1954–1984, vol 1: ethics, subjectivity and truth*, ed. P Rabinow, Penguin, Harmondsworth.
- Foucault, M 1991, *Discipline and punish: the birth of the prison*, trans. A. Sheridan, Penguin, Harmondsworth.

- Foucault, M 1988, 'An aesthetics of existence', trans. A. Sheridan et al, in *Politics, philosophy, culture: interviews and other writings, 1977–1984*, ed. LD Kritzman, Routledge, London.
- Foucault, M 1978, *The will to knowledge: the history of sexuality, vol 1*, trans. R. Hurley, Random House, New York.
- Foucault, M 1970, *The order of things: an archaeology of the human sciences*, trans. A. Sheridan, Vintage Books, New York.
- Golder, B, & Fitzpatrick, P 2009, *Foucault's law*, Routledge-Cavendish, Abingdon.
- Martin, R 1988, 'Truth, power, self: an interview', in *Technologies of the self: a seminar with Michel Foucault*, eds LH Martin, H Gutman & PH Hutton, University of Massachusetts Press, Amherst.
- Merquior, JG 1985, *Foucault*, Fontana, London.
- O'Leary, T 2002, *Foucault and the art of ethics*, Continuum, London.
- Paras, E 2006, *Foucault 2.0: beyond power and knowledge*, Other Press, New York.
- Ramazanoglu, C (ed.) 1993, *Up against Foucault: explorations of some tensions between Foucault and feminism*, Routledge, London.
- Schmidt, J & Wartenburg, T 1994, 'Foucault's enlightenment: critique, revolution, and the fashioning of the self', in *Critique and power: recasting the Foucault/Habermas debate*, ed. M Kelly, MIT Press, Cambridge.
- Wolin, R 2006, 'Foucault the neohumanist?', *Chronicle of Higher Education*, 1 September, p. 106.