

RESPONSE

Appropriation and Permission in the History of Philosophy: Response to McQuillan

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In a recent issue of this journal I proposed a rereading of Foucault as a Kantian critical philosopher. In the pages of the present issue of the journal, Colin McQuillan offers a challenge to my reading by taking express issue with my claim that Foucault can be productively read as a Kantian. To summarize the context for both McQuillan's reply and the present response, it will be useful to point out that the primary aim of my article was to dispute the recent trend in Foucault scholarship according to which archaeology and genealogy are best seen as efforts in phenomenological philosophy, stemming from various phenomenologists ranging from Edmund Husserl, Martin Heidegger, and Jean Cavaillès.¹ The occasion for my discussion was provided by an important recent article by Kevin Thompson in which he proposes reading Foucault through a minority tradition of phenomenology, referred to by Thompson as a "phenomenology of the concept" or "realistic phenomenology" and located primarily in Cavaillès, Bachelard, and Canguilhem.² My article was published with an insightful reply by Thompson, in which he challenged my discussion of certain limitations that I located in the Foucault-as-phenomenologist literature.³ In my further response to Thompson's reply, I took up his textual and philosophical challenge to my article, but only briefly discussed the background historiographical and metaphilosophical difficulties lingering behind our discussions.⁴

¹ Cf., Colin Koopman, "Historical Critique or Transcendental Critique in Foucault: Two Kantian Lineages," *Foucault Studies*, no. 8 (2010), 100-121.

² Cf., Kevin Thompson, "Historicity and Transcendentality: Foucault, Cavaillès, and the Phenomenology of the Concept," *History and Theory*, 47 (February 2008), 1-18. Other work in the Foucault-as-phenomenologist vein includes Béatrice Han, *Foucault's Critical Project: Between the Transcendental and the Historical*, translated by Edward Pile (Stanford, CA: Stanford University Press, 1998, 2002), and Andrew Cutrofello, *Discipline and Critique: Kant, Post-structuralism, and the Problem of Resistance* (Albany, NY: SUNY Press, 1994). References throughout contain, in some instances, two dates: in such cases the first date refers to the original year of publication in the original language and the second date refers to the year of publication of the translation and edition to which the page number citation refers.

³ Cf., Kevin Thompson, "Response to Colin Koopman's 'Historical Critique or Transcendental Critique in Foucault: Two Kantian Lineages,'" *Foucault Studies*, no. 8 (2010), 122-128.

⁴ Cf., Colin Koopman, "Historical Conditions or Transcendental Conditions: Response to Kevin Thompson's Response," *Foucault Studies*, no. 8 (2010), 129-135.

McQuillan's reply takes a different focus than Thompson's by offering a challenge to a second aspect of my article, in which I put forward the outlines of a reading of Foucault as a non-phenomenological Kantian. McQuillan's challenge is most welcome given that my original article was an attempt to negatively clear the ground of "the phenomenological Foucault" in order to make room for a positive elaboration of "a historical-critical Foucault" that takes his lead from a different appropriation of the work of Kant. I develop this positive reinterpretation of Foucault as a Kantian in the larger project from which my article took its lead (that larger project is, in short, a book-length manuscript on genealogy primarily focused on the work of Foucault). The present occasion of McQuillan's argument is, therefore, most welcome insofar as replying to him compels me to sharpen many of the points of my discussion germane to that larger project. I should like to take the occasion of this reply to offer some thoughts on those background considerations which I only pointed toward, but did not fully develop, in my response to Thompson. These considerations concern how we should approach the problem of appropriation in the history of philosophy and in the history of thought more generally. These considerations set the stage for my fuller argument that Foucault can be read as a Kantian (but since these greatly exceed the scope of a reply piece they will for the most part have to wait until the publication of the manuscript).

I shall be describing the disagreement between McQuillan and myself by way of a distinction between two genres of the historiography of philosophy. McQuillan appears eager to preserve a purified image of certain textual figures in the history of philosophy which would retain their original thought in the aura of a profundity. His *permissionist historiography* demands that we work with our history by way of asking it for permission whenever we want to deploy its insights. By contrast, my approach to the history of philosophy is oriented by an interest in the way in which the philosophy of the present breathes fresh life into its pasts and futures by means of the reuse, remix, and reappropriation of canonical concepts, authors, and *oeuvres*. My *appropriationist historiography* relies on an implicit demand that we creatively remake, rework, and remix our historical past for the purposes of the present. I use the term 'appropriation' advisedly, and by it I do not mean to suggest that opportunism and piracy should abound in the history of philosophy, but rather that creatively absorbing the insights of historical figures into one's work is exactly how philosophy works well. These represent two radically different ways of approaching the history of philosophy and our conceptual cultural inheritance. Both have their advantages and their disadvantages. I do not expect to, in the short space of a reply, definitively settle the argument on behalf of my approach to the history of philosophy. But I shall be able to say a few things, perhaps of interest to readers of this journal, about what an appropriationist historiography can achieve that a permissionist historiography will too often fail at.⁵

⁵ These two labels are offered in loose reference to Lessig's distinction between "remix culture" and "permission culture" in Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (New York: Penguin Press, 2008). The competing approaches to the history of philosophy I here discuss point to a much broader and particularly pregnant issue in contemporary culture concerning the way in which we make use of our cultural inheritance. Lessig discusses this from the legal-technological point of view of the problems raised for extant ways of dealing intellectual property by the digitization and internetization of our media environments.

I. Transcendental Philosophy

McQuillan's challenge focuses on two themes central to any reading of Kantian philosophy, of phenomenological philosophy, and of Foucault's relation to these two traditions. These concern, first, the project of "transcendental critique" as elaborated by Kant (later taken up by the phenomenologists), and second, the project of "philosophical critique" which I regard as a genus of which 'transcendental critique' is one species. Let me begin with transcendental critique before going on in the next section to consider the idea (about which McQuillan is dubious) of a critical practice that is not transcendental in orientation.

McQuillan's description of transcendental critique offers a solid overview of the way in which Kant thought transcendental philosophy should proceed and why philosophy itself ought to proceed in that manner. McQuillan agrees with me that, "There can be no doubt that Foucault rejected this approach." But, he continues, "the reasons Koopman cites in his discussion of the philosophical shortcomings of transcendental inquiry are not sufficient... Koopman offers no arguments which call the legitimacy of transcendental inquiry into question." Allow me to clarify my view so as to defend, in a more precise fashion, the claim of mine that I believe McQuillan is here criticizing.

We all know the major criticisms of transcendental philosophy that have been issued from diverse quarters across the twentieth century (in post-structuralist thought, in the tradition of critical theory, in pragmatism, in naturalistic veins of analytic philosophy, and perhaps most notably in feminist philosophy, critical race theory, and queer theory). To my mind the most forceful consideration that speaks against transcendental philosophy comes down to the difference between modal necessity and modal contingency. Transcendental critique makes sense only where we can grasp the objects of our inquiry through the category of necessity. The consideration that is most forceful to my mind is just this: there is plenty in our world that does not admit of necessity. Any critique whose object of inquiry is largely historical is going to have a tough time making sense of its object in terms of necessity. This, of course, does not amount to a refutation of transcendental critique. I have no interest in attempting such a refutation. All I aim to point out is the lack of usefulness of transcendental critique for objects of inquiry which are better understood as contingent compositions than necessary results.

In a related context, one in which the issue concerns the possibility of a rapprochement amongst continental, pragmatist, and analytic philosophy, Joseph Margolis recently writes:

You may claim that no one has ever demonstrated that there are no transcendental necessities to be had—and that is certainly true. But the burden of proof surely rests with transcendentalism's champions. At the risk of a self-defeating paradox, the argument against transcendentalism must be a form of *faute de mieux* reasoning—always open ended and piecemeal, never conclusively necessary or indefeasible. But there are no successful transcendental counterinstances to consult.⁶

⁶ Joseph Margolis, *Pragmatism's Advantage: American and European Philosophy at the End of the Twentieth Century* (Stanford: Stanford University Press, 2010), 124.

This, to my mind, strikes the right note. There is little point in attempting to elaborate the “philosophical shortcomings” of transcendental critique (but I admit that I do not really know what McQuillan has in mind here as a possible example of this). Yet there is a good point in pointing out that transcendental necessity is not to be found in a reasonably large share of our (Margolis would more strongly say “all of our extant”) objects of inquiry. Transcendental necessity is just not going to help you make sense of the prison, or of the history of science, or of contemporary sexuality. These things are just too complex for necessity to play the kind of role that a transcendental critique could illuminate. To see well here we need to focus light on the contingencies in a way that historical critique can help us to do.

What I am suggesting is that those of us working in such traditions as genealogical or pragmatist philosophy can proceed as we would without having to bash those of our interlocutors who maintain the ambitions of transcendental philosophy, even if we tend to think of those ambitions as having outlived their usefulness and as appearing rather quaint midst the massive contingency of contemporary self-consciousness. My project is not the negative one of bashing transcendental philosophy. It is the positive one of describing, defending, and deploying other forms of critical inquiry which are different from, and possibly also compatible with, transcendental critical inquiry. My goal has been to show that genealogical critique is not a form of transcendental critique but is not for that reason incompatible with transcendental critique and is also not for that reason disqualified from resuming in a different way the Kantian project of critical philosophy.

There are many ways of practicing critique. One would be to proceed at times in transcendental critical fashion and at other times in non-transcendental critical fashion. This, I think, is one way of making sense of the obvious differentiation featured in Kant’s text, for instance that between the first two *Critiques* and the historical, political, and anthropological writings. Another way of practicing critique would be to proceed in a critical fashion that is historical rather than transcendental in orientation without having to disparage transcendental critique in order to take up the project of historical critique. This, I think, is a good way of making sense of Foucault’s project, given not only what Foucault himself said about his own relation to Kant, but also given the contours of that project itself. A third way of practicing critique would be to simultaneously work toward historical critique and transcendental critique, which is how many would read Foucault’s efforts in *The Archaeology of Knowledge* (e.g., the concept of “the historical a priori”), though I fail to find the strong transcendental element in the text myself.⁷

I understand the majority of Foucault’s work as enacting a practice of historical inquiry that is critical in a robust philosophical sense without imposing upon itself obligations that would have to be met in order for it to qualify as transcendental philosophy. This does not mean that transcendental critique is saddled with certain “philosophical shortcomings.” It only means that transcendental critique is not well-equipped to accomplish some of the purposes that historical critique is well-equipped for. I previously urged this point in my reply to Thompson: “since transcendental conditions are universal in scope and necessary in

⁷ Michel Foucault, *The Archaeology of Knowledge*, translated by A.M. Sheridan Smith (New York: Pantheon Books, 1969, 1972).

modality (even if only with respect to a given historical *a priori*, as historical-transcendental phenomenologists would have it) they purchase their explanatory power only by divesting themselves of the idea of historical transformability."⁸ My claim there was not that transcendental philosophy is without critical purchase, but rather that it lacks critical purchase if one is interested primarily in the critique of historical objects of inquiry. This remains my claim.

II. Critical Philosophy

The foregoing discussion of transcendental critique raises another, I think more crucial, question. When does historical inquiry in this vein achieve the status of critique? What qualifies history as historical critique? McQuillan appears skeptical to the very possibility, at least with respects to some forms of history, such as Foucauldian archaeology and genealogy. At this point, I would like to take a step back from the debate and consider the implicit historiography that I find lurking behind McQuillan's criticisms. The skepticism at issue seems to me rooted in a historiographical strategy that is severely out of keeping with any viable conception of how to practice the history of philosophy.

II.A. *Two Kants*

McQuillan expresses skepticism about whether or not any practices of historical inquiry, including those which can be located through Foucault's own genealogical inquiries, can be deservedly described as "critical" in a "Kantian" sense. There is no doubt, McQuillan rightly observes, that Foucault's project is critical, but what is at issue, McQuillan insists, is whether or not it is critical in the right kind of "Kantian" way. To develop this point, McQuillan quotes Foucault's appropriative reversal of Kant in "What is Enlightenment?" and suggests that we should "take him to be announcing his departure from the Kantian tradition." I find this puzzling. In his writings on Kant, including the piece cited by McQuillan, Foucault maintained an express interest in the Kantian project of "critique" and worked to develop a distinction between two conceptions of critique that can be found in Kant, one of which he would endorse and the other of which he would leave to the side without criticizing. Amy Allen convincingly captures Foucault's double-relationship to Kant as follows: "Far from a rejection of the Kantian project, Foucault's inversion of Kant's notion of transcendental subjectivity constitutes a critique of critique itself, a continuation-through-transformation of

⁸ Koopman, "Response to Thompson," 132. McQuillan takes issue with my claim that Foucault's expansion of archaeological history into a genealogical history (that includes archaeology within it) was undertaken at least in part to the vexing problem of historical change which archaeology had, as Sartre and others pointed out, failed to adequately address. One sees Foucault addressing this problem already, and without success, in Part IV, Chapter 5 of *The Archaeology of Knowledge*. My view is that genealogy would yield a more satisfactory answer to the problem of historical change than is broached in the archaeological work. I have offered a more complete argument for my interpretation of Foucault on these points in Colin Koopman, "Foucault's Historiographical Expansion: Adding Genealogy to Archaeology," *Journal of the Philosophy of History* 2, no. 3 (Fall 2008), 338-362.

that project.”⁹ Foucault’s critique of Kantian critique itself depends upon a distinction between two Kants that is clearly featured in Foucault’s writings on the history of the modern critical attitude. Closely attending to Foucault’s discussions of Kant confirms Allen’s defense of Foucault as justifiably appropriating Kant in contrast to McQuillan’s insistence that Foucault needs more permission from Kant than he has been given.

Foucault’s distinction between two Kants can be found in many of his late writings, and most recently (in terms of publication date) in his 1983 Collège de France lecture course, now translated into English and published under the title *The Government of Self and Others*. These lectures open with a detailed discussion of Kant’s critical philosophy in order to set the stage for a meeting between modern philosophical critique and ancient philosophical *parresia*. Foucault distinguishes between a practice of critique that takes the form of an “analytic of truth” and another that takes the form of an “ontology of the present.” Foucault concludes this portion of his lecture with the following option: “We have to opt either for a critical philosophy which appears as an analytical philosophy of truth in general, or for a critical thought which takes the form of an ontology of ourselves, of present reality.”¹⁰ Foucault clearly preferred the latter project. What is most important in Foucault’s distinction for present purposes is that he expressly announces his project as a “critical” project that can be located through “Kant’s text.” My interpretation of these passages as distinguishing two Kants is hardly new. In his description of the lecture course published as an appendix to the volume, Frédéric Gros glosses Foucault’s meaning here in exactly the terms I am urging: “In places [in Foucault’s lectures] there remains the opposition between two possible Kantian legacies: a transcendental legacy to which Foucault refused to subscribe (establishing universal rules of truth in order to avoid the misuses of a dominating reason); on the other hand, a ‘critical’ legacy in which he wants to situate himself (challenging the present on the basis of the diagnosis of ‘what we are’).”¹¹ The operative distinction has also been developed by Edward McGushin in his work on the late Foucault: “Foucault appropriates Kant’s critical attitude while rejecting his transcendental philosophy.”¹² Note here the appropriate historiographical concept: appropriation.

Now, McQuillan’s argument is that, “There is, however, nothing particularly Kantian about emphasizing critique.” I agree. But I disagree with the implicit implication that Foucault’s emphasis on critique is hardly Kantian. McQuillan writes that “Foucault’s conception of ‘what a critique ought to be’ is one that leaves Kant behind.” I fail to see this. Foucault expressly took his conception of critique to be Kantian in orientation insofar as it was rooted in

⁹ Amy Allen, *The Politics of Our Selves: Power, Autonomy, and Gender in Contemporary Critical Theory* (New York: Columbia University Press, 2008), 24; Allen here refers as well to Thomas McCarthy’s contribution to David Hoy and Thomas McCarthy, *Critical Theory* (Cambridge: Blackwell, 1994).

¹⁰ Michel Foucault, *The Government of Self and Others: Lectures at the Collège de France, 1982-1983*, translated by Graham Burchell, edited by Frédéric Gros et. al (New York: Palgrave Macmillan, 2010), 21.

¹¹ Frédéric Gros, “Course Context” in Foucault, *The Government of Self and Others: Lectures at the Collège de France, 1982-1983*, translated by Graham Burchell, edited by Gros et. al. (New York: Palgrave Macmillan, 2010), 379.

¹² Edward F. McGushin, *Foucault’s Askēsis: An Introduction to the Philosophical Life* (Evanston: Northwestern University, 2007), 246.

an appropriative interpretation of Kant's texts. Foucault's appropriative relation to Kant's texts (reusing and remixing them) is evidenced by much in his thought, including: his explicit references to Kant, his careful rereadings of marginalized texts by Kant, his conception of critique as working on the "limits" of thought, and his use of the idea of "conditions of possibility" throughout his philosophic career. This, at least according to an appropriationist historiography, provides sufficient warrant for seeing Foucault's philosophical contribution as Kantian without adhering to the letter of Kant's philosophical contribution. My sense is that a historian of philosophy would be willing to deny Foucault this label only at the pain of employing an extremely rigorous form of a permissionist historiography. Allow me to turn, then, to the background historiographical matters that I take to be the real heart of the issue between McQuillan and myself.

II.B. Two Historiographies

Some historians would argue that history is all about obedience to that which the past dictates. Others of us hold that history ought to take a more critical relation to the past whereby we take primary responsibility for the freedom that ought to accompany our historical inquiries. McQuillan's *permissionist* historiography would have us ask the past itself, in this case the author-figure named Immanuel Kant as represented in the texts signed by that name, for permission to take up its legacy. This form of historiography can be useful, but it also bears obvious limits. These limits are, above all, a function of the implicit obedience toward the past that such a historiography demands of us. My *appropriationist* historiography, by contrast, would ask us to make productive use of the past on our own terms whereby we attend to and care for the past but without bowing to it in an obedient posture. This form of historiography also has its limits in addition to its uses. While it is limited for the purposes of historical reconstruction, or understanding the past in and on its own terms, it is especially useful for a form of historiography through which we are able to relate to our historical present with the intent of transforming that present.¹³

In my view, the contrast between "permissionist" and "appropriationist" historiographies recapitulates more general debates in modern culture between those who would have us be obedient toward tradition and those who would have us take up a posture of freedom toward ourselves.¹⁴ But that is another matter. And I do not take this matter to be settled based on my quick coverage here. All I take to be settled is a statement of what is at issue. McQuillan and I seem to have quite different interests at heart when we do work in the history of philosophy. Both of these interests can lead to productive work. What I am unsure of is how productive it is in the long run to impose the standards of permissionist historiography on appropriationist historiography when it is largely by virtue of the latter that the history of philosophy remains relevant to the concerns of our historical present.

¹³ Cf., Richard Rorty, "The Historiography of Philosophy: Four Genres" in Richard Rorty et. al. (eds.), *Philosophy in History* (Cambridge: Cambridge University Press, 1984).

¹⁴ See Lessig, n.5 above, as well as Harold Bloom, *The Anxiety of Influence* (Oxford: Oxford University Press, 1973).

One way of restating the issues of influence and inheritance operative here is in terms of a fine distinction between *Kantian* philosophy and Kant's philosophy, a distinction which I wish to defend but about which McQuillan appears nervous. What McQuillan objects to is my claim that Foucault's historical-philosophical practice is a practice of *Kantian* critique. It is notable that his points are framed in terms of "Kantian" philosophy, "Kantian" critique, and "the Kantian tradition" insofar as he seems to identify all things "Kantian" with what might be described as the express letter of Kant's texts in a way that can only rely on a permissionist historiography. In keeping with this implicit historiographical bias, his forceful challenges to my view take the form of close readings of the letter of Kant's texts. That one may find his rereadings disputable on certain points is hardly at issue here, though certainly that might be at issue elsewhere. For what is really at issue is whether or not we can settle the question of what counts as *Kantian* in philosophy by a careful examination of those thoughts that can be identified as Kant's. My view is that McQuillan's discussion is of great interest, but it settles (and then only potentially) what was Kant's view without settling (not even potentially) what is *Kantian*. It is the latter that I am interested in, while perhaps it is the former that interests McQuillan. We are both entitled to our interests, but allow me to say something further about what underwrites my own.

My view is that we need not, and indeed we should not, attend *only* to the letter of a philosopher's text in attempting to pick out those philosophical problematics which form by subtle and gradual accretion around their texts in ways that exceed the original letter of the philosopher's thought. Kant could never have controlled the problematics of *Kantian* philosophy which would well up around his texts. McQuillan wants to reinvest Kant's text with control over itself so as to guard it against appropriations by figures such as Fichte and Heidegger and Foucault (all three cited in his reply). This is not only impossible insofar as it assumes that interpretation is secondary rather than primary with respect to what a text is, but it is also unhelpful because it discourages us from seeing how thought always exceeds its keepers by doing its work by way of bursting outside of the contexts for which it was originally formulated. Understanding what is *Kantian* in our philosophical inheritance, in the sense of what in Kant persists in that inheritance, most certainly requires attending to Kant's texts, but it requires attending to much else besides. It also requires, at the very least, attending to the thought of Kant's contemporaries, his most important predecessors, and his most creative successors. And, if we want to be genealogists rather than historians of ideas about such problematics, then it also requires attending to the political, social, scientific, ethical, economic, cultural, and other processes which condition our inheritance of Kant. To take an easy example, the inheritance that is *Kantian* philosophy today could not have formed without the development of the modern academic university with its immense commentary engines and its rigorous requirements for professional scholarship; now that development is something which can hardly be said to be Kant's even if his case is unique for the role his thought has played in the contingent composition of that kind of institution. One can hardly be a Kant scholar these days by reading only Kant, and a Kant scholar who objected to uses of Kant which cannot be found in Kant's texts would be an extremely strange kind of academic specimen indeed.

This brings me to important questions we academic historians of philosophy need to be more forthright in asking ourselves. Wherein should we locate the value of our work? What is worth preserving from the history of philosophy in its purity? What is worth holding on to only if we can creatively appropriate it? Why is the history of philosophy important at all? There are a whole host of such historiographical questions, unanswered because too often unasked, that demand our urgent attention. My own attempts at answers to these questions take their bearings from certain insights of Foucault's, but also others including historically-minded analytic philosophers like Bernard Williams and pragmatist philosophers including John Dewey, John Herman Randall, and Richard Rorty.¹⁵ I hope to have made clear here why we should find a permissionist historiography quite distant from nearly everything we have learned about the history of thought from Foucault. That Foucault himself practiced appropriationist history of philosophy is without doubt: "I am tired of people studying [Nietzsche] only to produce the same kind of commentaries... I prefer to utilize the writers I like. The only valid tribute to thought such as Nietzsche's is precisely to use it, to deform it, to make it groan and protest. And if commentators say that I am being faithful or unfaithful to Nietzsche, that is of absolutely no interest."¹⁶

Some historians of philosophy want to keep certain ideas mined from the history of philosophy pure. They want to keep Kant as he was, or Plato as he was, or Nietzsche as he was, or even Foucault as he was. The thinking here is usually that such an approach helps us get a grip on the profundity of thought featured in the work of genius: the great dead philosopher is supposed to have had privileged access to something special such that our job is to gain entrance to the depths of that special thing as featured in their texts. Some other historians worry that this strategy is likely to bury the past in its inevitable death. They worry that this strategy amounts to little more than asking the dead past for permission to revive it in the present. They think that it is misguided to seek the express warrant of the past to make use of the past in the present. They think that we need only the permission of the present, which is not of course to say that we need no kind of permission whatsoever. They think that the standards by which we ought to grant or deny ourselves that permission should be hung, above all else, on how our use of the past in the present facilitates the free work of transforming our selves into the future. This is, I would suggest, a Foucauldian way of approaching the history of philosophy, and it is ours to appropriate and remix for our own purposes today.

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¹⁵ For two forthcoming articles in which I address these questions from the points of view of these other traditions see Colin Koopman, "Bernard Williams on Philosophy's Need for History" forthcoming in *The Review of Metaphysics* 64, no. 1, (forthcoming Sept., 2010) and Colin Koopman, "Historicism in Pragmatism: Lessons in Historiography and Philosophy," *Metaphilosophy* 41, no. 4, (forthcoming Oct. 2010).

¹⁶ Michel Foucault, "Prison Talk", interview with J.-J. Brochier in Foucault, Colin Gordon (ed.), *Power/Knowledge* (New York: Pantheon, 1980), 53-4. I thank Amy Allen for drawing my attention to this passage.