

Book Note

FOUCAULT'S LAW, by Ben Golder and Peter Fitzpatrick¹

AHSAN MIRZA

MICHEL FOUCAULT ONCE SAID, "I dream of the intellectual who destroys evidence and universalities,"² and, further, that, "The work of an intellectual is ... to question over and over again what is postulated as self-evident, to disturb people's mental habits, ... to reexamine rules and institutions"³ This questioning and reexamining is at the very heart of Ben Golder and Peter Fitzpatrick's project in *Foucault's Law*. They provide an innovative rereading of Foucault's position on the law, radically opposite to how legal theorists have thus far assessed it.

As Golder and Fitzpatrick discuss at length in Chapter 1, the prevailing reading of Foucault's position on the law holds that, in his analysis of contemporary power relations, law is marginalized and subordinated to other dominant modalities of power in modern society.⁴ Against this "expulsion thesis," Golder and Fitzpatrick develop their understanding of Foucault's law as central (rather than marginalized) to his work and as "relationally inter-dependant" to other modes of power (rather than subordinated to them).⁵

-
1. (New York: Routledge, 2009) 143 pages.
 2. Michel Foucault, "Power and Sex" in Lawrence D. Kritzman, ed., *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, trans. by Alan Sheridan et al. (New York: Routledge, 1988) 110 at 124.
 3. Michel Foucault, "The Concern for Truth" in Kritzman, *ibid.*, 255 at 265.
 4. See Alan Hunt & Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto, 1994). The primary Foucaultian modalities of power are discipline ("systems of micro-power that are essentially non-egalitarian and asymmetrical," which ensure that populations are docile and self-policing) and biopower (a diverse set of techniques and concepts used "for achieving the subjugations of bodies and the control of populations"). See Michel Foucault, *The History of Sexuality, Vol. I: Will to Knowledge* (Victoria: Penguin, 1978) at 140; Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Random House, 1975) at 222.
 5. *Supra* note 1 at 61.

For the uninitiated in Foucault, Golder and Fitzpatrick are also quick to clarify that their understanding of Foucault's law is different from a theory of law conventionally understood.⁶ Rather, law in Foucault's modernity is "the uneasy, ambivalent relation" between "law as a determinate and contained entity" and "law as thoroughly illimitable and as responsive to what lies outside or beyond its position for the time being"; "law as a law of possibility, contingency, and lability."⁷ The law is not a contained entity, as described in positivist accounts, but is in a condition of "perpetual hyphenation," as indicated by Foucault's coinage of terms: "politico-juridical," "epistemologico-juridical," "scientifico-legal," and "juridico-anthropological."⁸ The law is ever-changing through influence from things which are other to it, and ever-absorbing of these in its "vacuity."

In Chapter 2, the authors develop the understanding of law as relationally interdependent with other modalities of power. Law is essential both to the making of "knowledge claims" that serve to legitimize discipline and to the exercising of power on recalcitrant subjects. However, law is more than a mere side-kick, and the authors expand on their view of its centrality towards the end of their book, thereby illustrating a complete reversal of the expulsion thesis.

Here, law emerges as central to the formation of knowledge and social organization—to the social bond—and as a "mold or model on the basis of which a series of other knowledges—philosophical, rhetorical, and empirical"—develop.⁹ Law's responsive dimension and illimitability are the domains where aspects of society can be "interrupted and unmade, reiterated and made anew."¹⁰

Foucault's Law is a radical departure from literature that has come before it, both in its reimagining of Foucault and in its de(con)struction of positivist narratives of law. From an editorial standpoint, the authors provide excellent organization, fluidity of argument, and clarity of expression. Given the abstract, theoretical subject matter of the book and the complex post-structuralist paradigm within which it is situated, the authors expertly guide the reader through their arguments and explanations without oversimplifying or undermining the complexity of the subject matter that they tackle. *Foucault's Law* stands at a concise 143 pages, but the authors fully develop and deliver on all that is promised.

6. *Ibid.* at 4.

7. *Ibid.* at 2.

8. *Ibid.* at 60.

9. *Ibid.* at 129.

10. *Ibid.* at 111.