

[book reviews]

Re-reading Foucault: On Law, Power and Rights

Ben Golder, Editor

(New York: Routledge, 2013. 264 pages.)

<http://www.routledge.com/books/details/9780415673532/>

Reviewed by—Irina Ceric, (Criminology Faculty member, Kwantlen Polytechnic University),
Vancouver, October 2014

*R*e-reading Foucault is an ambitious and mostly successful attempt to answer the question “Where is the law in Foucault and what has he done with it?” and the contributors’ creative responses demonstrate the breadth of the interdisciplinary analyses emerging in the wake of the translation of Foucault’s later lectures into English. The collection is dedicated to the “interpretive work of re-imagining law in, and through, Foucault’s work” but the key themes—the



politics of rights, surveillance, biopolitics and Foucault's gestures towards the juridical in his lectures on history, knowledge and power—reflect a broader orientation of likely interest to readers in disciplines other than law. To some extent, however, this potential is belied by the book's initial focus on the so-called expulsion thesis, the notion that "Foucault had expelled law from any significant role in modernity." Initially straying into the minutiae of the existing literature, the authors taking up the expulsion thesis ultimately succeed in locating this debate within the context of Foucault's broader political and theoretical development.

In "Expelled Questions," Colin Gordon begins by admitting that "whether one likes it or not, [Foucault] does not have a master theory or thesis about law" but goes on to forcefully argue that naming this omission as a problem is a deliberate choice. Moreover, this choice, according to Gordon, is the result of Foucault's historical location within a particular politico-intellectual culture, one in which "a commitment to law" on the part of leftists can be traced to the demise of actually existing socialism, and the concomitant desire for a "permanent statement that the errors of socialist regimes have been understood, and will not be repeated" (20). In this context, Gordon contends, the apparent absence of law in the "bundle of innovations and challenges presented by Foucault's work" was less troubling if one could claim that he had failed to even attempt the topic "now judged to be compulsory for any thinker with a serious claim to advise Left political forces aspiring to the legitimate acquisition of sovereign power" (21). Whether or not one agrees with the description of this task as "compulsory," the foundation of Gordon's claim—the existence of a commitment to law and legality on the part of a left critical of actually existing socialism—continues to resonate, given contemporary debates on the left with respect to

law, the state, and the limits of democratic legitimacy (arguably, most notably during the presidency of Hugo Chavez). Through his defence of Foucault, Gordon also succeeds in linking the expulsion thesis and the initial re-discovery/revival of Marxist legal theory in the 1970s to current iterations of a renewed Marxist approach to international law, and the resulting need to glean Foucault’s relevant insights while moving beyond the confines of the expulsion thesis debate.

Perhaps it is not surprising then that Alan Hunt, a long-time theorist of socialist approaches to law, as well as one of the key figures in the expulsion thesis debate, provides two examples of exactly this sort of contribution. First, as does Gordon, Hunt canvasses Foucault’s claims that the techniques that emerged with the “inquiry” continue to contribute to contemporary forms of legal knowledge production, generating—and explicating—juridical procedures still in use today. The focus of Hunt’s piece, however, is the development of the concept of the “juridical assemblage” arising from Foucault’s 1973 lectures in Rio de Janeiro. Juridical assemblages “designate the coexistence of different combinations of legal, judicial and normative elements,” and make it “possible to bring together some of the disparate elements found in Foucault’s engagement with the juridical field” (81). By deploying this concept, Hunt argues, we can stop “castigating” Foucault for the narrowness of his explicit engagements with law and instead “appreciate his focus on the interaction between different fields of power, knowledge and governance” with which forms of law interact.

More than an analytical tool, Hunt’s juridical assemblage may be read as a form of praxis, and as an example of *Re-reading Foucault’s* success in highlighting the contemporary utility of Foucault as both a theorist and a public (or in his own term, “specific”) intellectual. Gor-

don's defense of Foucault relies on the "tactical and strategic context" underlying Foucault's now-apocryphal debates with Deleuze, Chomsky, and Lévy and Glucksmann, and especially Foucault's challenge to orthodox Marxism, while Jessica Whyte cites Lévy's questions to Foucault on the desirability of revolution as the genesis of a shift in his position on rights. In her accessible and timely chapter, Whyte charts the relationship between the emergence of a politics of rights in the 1970s and the constitution of a neoliberal governmental rationality that emerged at the same time. She concludes that in the absence of revolutionary intent, the "dissident" politics of human rights (as an example of Foucault's concept of "counter-conduct," specific forms of resistance emerging out of correlating governmentalities), provided a substitute utopia to revolutionary Marxism, one which largely accepted the "rules of the neoliberal game" (224). Whyte's exploration of the shift from Foucault as a strident critic of rights to a contributor—theoretically and practically—to the formulation of a new politics of rights exercised by the "governed" dovetails with Gordon's historicization of Foucault, tracing a similar trajectory of his changing relationship to the left, Marxism, and the prospects for resistance.

The contributions highlighted above constitute only a fraction of the breadth of *Re-reading Foucault*, but they are exemplary of the rigour and reach of the book's contribution to both critical legal theory and the seemingly bottomless body of research and reflection on Foucault's politics. Marcelo Hoffman recently underscored the potential of this project, arguing that in *Discipline and Punish*, Foucault was speaking back to participants in the prisoner support movement years after his withdrawal from that movement," suggesting that "a sort of dialectic" had arisen between Foucault's theories and practices, with his theories "both emerging from collective political practices

and serving to further inform these practices.”¹ At its best, *Re-reading Foucault* confirms Hoffman’s hypothesis, sharpening our understanding of Foucault’s entanglements with the juridical while shedding new light on the evolution of his work overall.



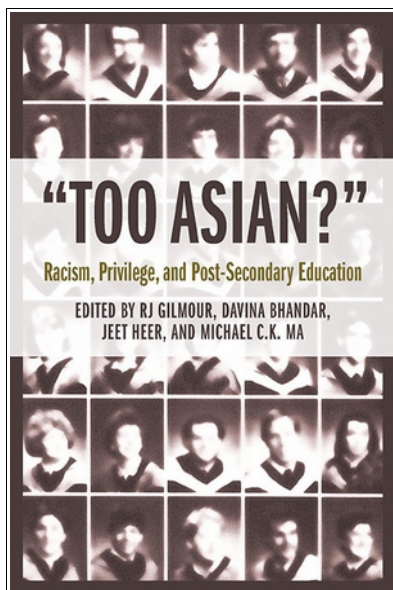
“Too Asian?” Racism, Privilege, and Post-Secondary Education

RJ Gilmour, Davina Bhandar, Jeet Heer, and
Michael C.K. MA. (Editors)

(Toronto: Between the Lines, 2012. 224 pages.)

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In 2010, *Maclean’s* became the subject of popular controversy when it asked, in a piece entitled “Too Asian” by Stephanie Findlay and Nicholas Köhler (later retitled “The Enrollment Controversy”), whether university campuses across Canada were



¹ Marcelo Hoffman, “Foucault and the “Lesson” of the Prisoner Support Movement” (2012) 34 *New Political Science* 21 at 24 and 36.