

cannot be explained on simple ideological terms. Once understood as an admixture of different interests, coalitions, and strategies that evolve over the course of American governance and political time, retrenchment exacts a cost that is not only substantial, but ironic. All too often the original goals of reform efforts that seek to increase judicial access for the politically disadvantaged in the rights revolution have been undermined by the behind-the-scenes practices of subsequently denying it by manipulating the institutional rules and processes that govern judicial access and rights or remedies. In advancing her theory, Staszak successfully navigates beyond conventional studies in American political development that arguably remain isolated in describing the effects of Supreme Court doctrine within a myopic interpretation of judicial institutions and American political development. In doing so, Staszak makes a significant contribution to the law and courts literature by powerfully reminding us that the arcane realm of jurisdictional rules of courts and procedure is often the proving ground, and substantive foundation, for securing litigant access to courts and justice.

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*Foucault and the Politics of Rights*. By Ben Golder. Stanford: Stanford University Press, 2015. 246 pp. \$24.95 cloth.

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Nowadays, liberal political contexts revel in claims to universal human rights. Their discourses tend to frame the latter as bulwarks of individual freedom, preventing arbitrary coercion, detention, torture and worse. Whiggish historical accounts cast rights as inevitable outcomes of social progress stretching back to ancient Greece though the Enlightenment to mid-20th century declarations. But as Moyn (2012: 3) notes, current understandings of human rights depart significantly from past iterations; they emerged, “in the 1970s seemingly from nowhere.” Other critics (Brown, Butler, Rancière) echo the contingency here implied, reframing debates to focus on how rights might explicitly constrain rulers.

Referencing these critics, Golder explores Foucault’s evocations of rights in his later analyses of political struggles, aiming to unearth a “critical politics of rights” that is “anti-foundationalist, non-

anthropologically grounded” and “tactically oriented towards intervening into existing formations of law, state and power” (3). This reading clearly contests Wolin’s and Paras’ claim that Foucault’s later foray into rights (ethics and subjects) contradicts his past work by belatedly appealing to neo-humanist foundations. Instead, Golder argues that Foucault merely shifted emphasis in his later writing, and continued the genres of critique animating his earlier historical studies of power (sovereignty, discipline and biopolitics), and indeed the archeological and genealogical methodologies.

But what sort of critique did Foucault embrace? Golder extracts a historically-situated set of critical practices that disassembled limits so as to open, “the contingent present to an undetermined future” (32). Thus Foucault’s approach to critique did not judge contexts against transcendental yardsticks; it called for local acts that refuse limits and so affirm alternative futures. It unhinges and displaces historical limits but always from within. Golder refers to Foucault’s discussions on pastoral power to show how his “counter-conduct” concept refined ideas about resistance while simultaneously framing a critique that, “tries to isolate and mobilize the particular possibilities for change and contestation disclosed within and by those practices themselves” (51). Here one detects a Nietzschean affirmation of what could be, an “excavation” rather than a pure rejection. In other words, this kind of critique exposes, “human possibilities that are forgotten when contingent social and political formations come to be naturalized and rendered commonsensical” (58). It embraces a “hidden margin of freedom” which enables subjects to exist otherwise than they presently do (58).

Foucault’s critique of human rights should thus be understood in a particular way. Rather than a blanket rejection, he approached rights within liberal political arenas as ordinances that may be used to further particular struggles. For instance, his discussions of the Iranian revolution, the Polish Solidarity Movement, and piracy summoned rights to place limits on dangerous forms of government. But there is no inevitability here, because Foucault recognized that rights are “ambivalent” in the “counter-conduct” sense that they can be used both to govern subjects and simultaneously to contest particular governing practices. In many ways, this approach echoed his nominal approach to power relations—a right (power) comes into play only through its always-contestable invocation (exercise). Rights may be invoked to buttress specific ideas of the subject (say as a ‘human’) just as they may contest the same. In Foucault’s sense, rights claims are ultimately indeterminate, as are the subjects who bear such rights—given political contexts recursively create particular rights-bearing subjects.

With this undetermined politics in mind, Golder frames Foucault’s approach to rights as “a form of critical counter-conduct, insisting that rights cannot help but disclose immanent possibilities for critique and rupture alongside their more regulatory uses” (91).

Activists should therefore consider rights as dynamically unsteady, and never amenable to fixed identification; they may be mustered in some, but not all, acts of refusal. Extrapolating from Foucault's brief statements about the communist lawyer, Vergès (who defended the infamous, including Nazi, Klaus Barbie, supposedly to rupture the law's legitimacy), Golder indicates their tactical use as resources within a particular "game" in "order to play it differently" (118). Equally, calling for a "right to suicide" (rather than a biopolitically conceived "right to life"), Foucault evoked rights tactically to contest medicalized and biopolitical self-management. By contrast, he avoided appeals to rights in his work on the death penalty. Hence, Golder describes Foucault's approach to rights as both tactical and strategic, depending on context. In other words, his various attempts to name, contest and transform liberal terrains—either by tactically invoking human rights or strategically avoiding them—reflects a wider attempt to navigate the political space between "liberalism and revolution" (5).

*Foucault and the Politics of Rights* offers a methodical and close reading of Foucault's critical appropriation of rights thinking. It provides a persuasive exegesis, deftly showing how his specific critiques of political conditions evoked indeterminate rights to help resist particular forms of conduct. As Golder argues, that approach swims comfortably within the currents of his earlier work, for he never lost sight of the contingencies that rendered liberal images of rights possible. This book will appeal to students and scholars seeking an in-depth discussion of Foucault's broader framings of critique and power, as well as his later elicitations of ethics, subjects and rights. It also provides political activists with a reflexive, critical view of how human rights might be tactically or strategically envisaged within particular political struggles.

For those tempted to yawn at the prospect of yet another tome on Foucault, I would recommend suppressing the urge: read the book and become submerged in a gathering of texts not often interpreted together. Its insightful probes will reward readers with absorbing ways to think differently about human rights that are now the *lingua franca* of dominant liberal political horizons. Whether engaging rights is ever the right way to go politically may be a question in some minds, but this book will provide captivating ways to consider them indeterminately. That alone is a laudable instance of counter-conduct in an ethos so stridently governed by fixing human rights to determined subjects.

## Reference

Moyn, Samuel (2012) *The Last Utopia: Human Rights in History*. Cambridge, MA: Belknap Press.