International Journal of Law in Context (2021), **17**, 44–50
doi:10.1017/S1744552321000203

ARTICLE

How to do things with Foucault (legally)

Ben Golder*

Associate Professor, Faculty of Law and Justice, University of New South Wales, Australia
*Corresponding author. E-mail: b.golder@unsw.edu.au

Abstract

In this essay, I discuss the legal theorist, Peter Fitzpatrick's, reading of philosopher Michel Foucault. My intent is to show how and why Foucault was important to Fitzpatrick and what this reveals about the latter's practices of reading. I characterise this particular reading in three ways. First, against the disciplinary tendency to assume that Foucault is more useful to lawyers for how he approaches law (as method), Fitzpatrick takes seriously what Foucault has to say about law as a conceptual matter. Fitzpatrick hence reads Foucault as a legal thinker. Second, Fitzpatrick does not restrict himself to the conventional archive of Foucauldian texts that legal scholars routinely consult, but reads more widely and creatively in his search for law. Third, Fitzpatrick reads Foucault open-endedly and generously rather than instrumentally or dismissively – textual ambivalence and contradiction are always, in his hands, sources of creative possibility and insight. This leads into some concluding reflections about Fitzpatrick's practice of critically rereading thinkers – all thinkers, not simply Foucault.

Keywords: Peter Fitzpatrick; Michel Foucault; practices of reading

In this brief essay on the work of Peter Fitzpatrick, I want to reflect upon one of the many intellectual encounters that were formative in the development of his distinctive, post-structuralist account of modern law. Fitzpatrick's intellectual range and breadth were legendary, spanning almost every conceivable scene of legal interdisciplinarity, from law and anthropology to law and literature, and, in the course of a long scholarly career (characterised by an appreciative and appropriative intellectual curiosity), many thinkers were pivotal to him: Freud, Nietzsche, Marx, Derrida, Blanchot, Nancy – and many, many others besides. I thus cannot hope to do justice to each of these encounters in some kind of synoptic or biographical account so shall instead focus upon one particular thinker who, I shall argue, merits close attention: Michel Foucault.[1] In so doing, and in the pages that follow, I take Fitzpatrick's multiple engagements with Foucault as an invitation to say something both about what made that particular encounter distinctive and important for Fitzpatrick, and also of what it reveals about his mode of critical rereading. But let me first start with Foucault and set the scene somewhat in terms of his reception in (Anglophone) law and legal studies.

In the fields of socio-legal studies, law-and-society scholarship and critical legal studies, the intellectual influence of Foucault has been well established for decades.[2] It is surely not contentious any more, even in a discipline that came relatively late to his work, to claim him as a canonical figure. For many researchers, Foucault's methods and concepts (Koopman and Matza, 2013) represent axiomatic (often presuppositional) starting points – part of the shared and often unquestioned disciplinary

[1]For a recent (auto)biographical account that discusses Fitzpatrick's intellectual trajectory and the reading of particular thinkers who were influential upon him, see Fitzpatrick (2020, as completed by Mulqueen, Paliwala and Tataryn). See further the two excellent video interviews conducted with Fitzpatrick in 2017 by Professor Sundhya Pahuja and Dr Adil Hasan Khan under the auspices of the 'Eminent Legal Scholars' project, available at https://eminentscholars.org/peter-fitzpatrick/ (accessed 3 August 2020).

[2]This is hardly surprising given his status in the humanities and social sciences, as well as the ongoing publication and translation of his Collège de France lecture courses. On the former, see Nealon (2008, p. 1).

© The Author(s) 2021. Published by Cambridge University Press

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press

understanding and orientation of researchers working in the abovementioned three fields today. Whether it be his early *archaeological* work (Foucault, [1966] 1994; 1972) that has proved fertile in discourse analysis or in accounts of how law produces knowledge about its regulatory objects, his *genealogical* approach to the construction of apparatuses of sexuality or of the power to punish (Foucault, 1978; 1991) or his rethinking of power as relational and as co-constituted with knowledge (*power/knowledge*) – Foucault's methodological influence has been and continues to be profound (see Golder and Fitzpatrick, 2010). Just think, for example, about how, in response to his oft-cited injunction to displace the problematic of sovereignty in political thought (in memorable yet sanguinary terms, to 'cut off the King's head': Foucault, 1980b, p. 121), researchers have produced legally pluralist studies of governance and, as an influential paper in the *British Journal of Sociology* put it in 1992, of 'political power beyond the state' (Rose and Miller, 1992; see also Walby, 2007). Methodologically, at least, Foucault is broadly accepted now. Conceptually, too, Foucault's historically specific and located conceptualisations of *discipline* and *biopower* (1978; 1991), and, in particular, of the somewhat ungainly neologism of *governmentality* (2007), have proved hugely influential in legal scholarship (Rose and Valverde, 1998; Rose *et al.*, 2006).

And yet it is also fair to say that Foucault, even in a legal scholarship otherwise receptive to both his methodological and his conceptual innovations, has not been taken up seriously as a legal thinker in his own right. Enter, in a moment, Fitzpatrick. But, before introducing Fitzpatrick's particular reading and deployment of Foucault, it is as well to set the scene just a little bit more and to diagnose (even if bluntly) why it is that legal scholars tended not to read Foucault for what he had to say about law per se – as this, on my account, partly helps to distinguish Fitzpatrick's own reading of Foucault. The reasons are varied and are ranged on both sides of the ledger, as it were: attributable both to Foucault and to legal scholars.

As to Foucault, if there is a methodological metaphor as popular (perhaps even more so?) than the regicidal one just instanced, it is the idea that his work furnishes a 'tool box' that can be rummaged in and particular aspects deployed in different fields to different effects (rather than constituting a coherent philosophical system).[3] This express invitation licenses a certain eclecticism and *bricolage* in the use and application of his work (and here it is at least advisable to slow down over the retelling of this metaphor to observe that a minimally effective deployment of a tool nevertheless imports some grasp of its overall purpose or *telos*, such that a hammer is neither particularly apt for cutting nor a saw for hammering). When allied to Foucault's own discontinuous and fluid intellectual practice, this license inclines many legal scholars to read Foucault not for what his scattered and unsystematised *aperçus* might reveal about law, but rather for what his methodological tools can do for those of us who *do* take law seriously (see Wickham, 2002, pp. 253–261). If most legal scholars tended to read Foucault selectively and instrumentally, those who did seek to mine the seams of legal knowledge in his writings either concluded that he 'never seriously investigated legal matters' (Baxter, 1996, p. 464), that 'his concern with law was largely incidental [to other things]' (Smith, 2000, p. 284) or (worse), that what little he had to say about law confined it to a minor role in the exercise of modern power. This latter interpretation is the well-known 'expulsion thesis', classically exposited by Alan Hunt and Gary Wickham (in 1994), which holds that, on Foucault's account of the transition to modernity, law is expelled from any real social or political role, bypassed and overrun by discipline,

[3]The metaphor is also deployed in subtly different ways. So, for example, in one place, Foucault writes: 'All my books … are little tool boxes … if people want to open them, to use this sentence or that idea as a screwdriver or spanner to short-circuit, discredit or smash systems of power, including eventually those from which my books have emerged … so much better!' (cited in Patton, 1979, p. 115). In a 1977 interview, Foucault suggests that 'the notion of theory as a tookit [sic] means … the theory to be constructed is not a system but an instrument' (1980a, p. 145). Finally, in the well-known conversation between Foucault and Gilles Deleuze in 1972, after several comments by Foucault about how theory is 'local … and not totalizing' and is 'an activity conducted alongside those who struggle for power' rather than (something external to and explanatory of those struggles), it is Deleuze who remarks: 'Precisely. A theory is exactly like a box of tools. … It must be useful. It must function' (Foucault, 1977b, p. 208). As it circulates in just these primary texts, let alone the burgeoning secondary literature on Foucault, the metaphor indexes separate and overlapping questions of: the totalising nature of theory, the relation of different aspects of a theory to each other, the relation of theory to practice and the utility of theory to practice.

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press

biopower and governmentality. To complete the picture, and whilst Hunt and Wickham's interpretation of Foucault can be excused on this account, doubtless too many legal scholars, expressing a disciplinary chauvinism that could not have been more antithetical to Fitzpatrick's own encompassing *ethos* as a scholar, asked (with Hugh Baxter) '[i]f Foucault's work offers no plausible account of law, why should legal scholars take him seriously?' (Baxter, 1996, p. 450; cf. Gordon, 2013). Indeed.

Into this somewhat unpropitious, potentially fractious, interdisciplinary conversation strides Fitzpatrick. In what follows, I want briefly to touch on some exemplary episodes in Fitzpatrick's decades-long legal theoretical (re)reading of Foucault. Given the length of this scholarly engagement, my account will necessarily be episodic, but I hope nonetheless to extract from it several key themes that I take to be distinctive and definitive of Fitzpatrick's way of reading Foucault. To anticipate these themes, they are threefold (and the third will lead into my concluding, and more general, discussion about Fitzpatrick's distinctive mode of critical (re)reading). First, against the disciplinary tendency to assume that Foucault is more useful to lawyers for how he approaches law (as method), Fitzpatrick takes seriously (and does so from the beginning) what Foucault has to say about law as a conceptual matter – law, in Fitzpatrick's reading of Foucault, has a quality and quiddity like his (Foucault's) other conceptual objects: discipline, biopower, governmentality and so forth. Fitzpatrick hence reads Foucault as a legal thinker. Second, Fitzpatrick does not restrict himself to the conventional archive of Foucauldian texts that legal scholars routinely consult, perhaps hoping to see their own concerns reflected in Foucault's much-traversed mid-1970s accounts of power, right and sovereignty, but ranges bibliographically and creatively in ways that frustrate the received temporal account of Foucault's *oeuvre*. Third, Fitzpatrick reads Foucault open-endedly and generously (we might equally say 'reparatively': Sedgwick, 2003) rather than instrumentally or dismissively – textual ambivalence and contradiction are always in his hands a source of creative possibility and insight: a beginning not an end.

Present constraints preclude a full accounting of his many legal theoretical engagements with Foucault and so what follows is a necessarily truncated chronology, but it will hopefully exemplify some of the features that I have just listed. Mulqueen, Paliwala and Tataryn (Fitzpatrick, 2020) helpfully date one of Fitzpatrick's earliest published treatments of Foucault to 1983 in the pages of the *Australian Journal of Law and Society*, where, in a paper entitled 'Marxism and legal pluralism' (Fitzpatrick, 1983), he discusses the reciprocal constitution of law and (metonymically) 'science' (his focus being Foucault's disciplinary power and forms of modern administration).[4] I pick up the story almost a decade later in Fitzpatrick's *The Mythology of Modern Law* (1992), in which some of the same themes are evident and are developed further. Foucault performs several important roles in *Mythology* but, if we focus simply on Chapters Four ('The mythic consolidation of modern law') and Five ('Law and myths') of that book,[5] we can discern ample examples of what I have called Fitzpatrick's conceptual reading of Foucault and of his more generous approach to reading Foucault's texts. In Chapter Four, for example, Fitzpatrick relies heavily upon Foucault's account of disciplinary subjection in developing an understanding of legal subjectivity that shows that modern law (at least, mythically, in the metropole if not the colony) 'depend[s] on a responsive, acceptant subjectivity' fashioned by disciplinary powers (1992, p. 135; see further Fitzpatrick, 1995).[6] Fitzpatrick thus reads Foucault not as merely providing the genealogical tools for others to develop a more nuanced or developed account of modern law, but as himself providing an account of legal subjectivity that is directly relevant for legal theory ('this subjectivity … provides a basis for modern law': 1992, p. 119).

[4]The 1983 text is revealing for a number of reasons, illustrating not only the centrality of Fitzpatrick's engagement with Marxism in the early 1980s (leavened even then with a heterodox post-structuralism), but also his distance from contemporaneous Marxist accounts of law and society (in both a European and Anglophone context) that were expressly critical of Foucault. For this latter context, see Poulantzas (2000, p. 77), Fine (1984, p. 200); Hirst (1986, p. 49).

[5]For a Foucauldian development of themes in the piercing fifth chapter of *Mythology*, namely Fitzpatrick's critique of Hart ([1961] 2012), see Mulqueen (2017).

[6]Another way to express this argument jurisprudentially would be to say that Foucault points to the necessary but necessarily disavowed disciplinary supplement that allows the rule of law, on someone like Jeremy Waldron's account, to treat legal subjects in a dignified manner. See Waldron (2012).

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press

(At the same time, taking Foucault seriously as a thinker of legal subjectivity does not mean marginalising or excising the 'paradox' or 'inconsistency' in Foucault's otherwise 'revelatory' ideas; rather, it means not simply jettisoning these insights for legal scholarship or seeking to flatten or displace them: Fitzpatrick, 1992, p. 119; cf. Hunt and Wickham, 1994, pp. 48–49, 56–58).

Taking the account further in Chapter Five of *Mythology*, Fitzpatrick revisits themes from his 1983 paper and 'with Foucault's considerable help, identif[ies] a symbiotic link between the rule of law and modern administration … [in which] law is subordinate to administration yet also controls it' (1992, p. 147). This is a narrative of modern law's continuing vitality in which, 'draw[ing again] on Foucault and on his work on power' (1992, p. 150), Fitzpatrick shows how law (contra the 'demise of law' accounts of Unger (1976) and indeed of that imputed to Foucault himself) is not simply overrun by discipline or governmentality, but in fact subsists with them in a relation of 'operative compatibility', each sustaining and compensating for the other (1992, p. 149).

This theme of law's compensating and co-constitutive relation with forms of power and governance that putatively lie outside and beyond it is one that Fitzpatrick develops further in his next major work, *Modernism and the Grounds of Law* (2001). There are several ways to understand the shift from *Mythology* to *Modernism*; as one of structure and style, of thematic and conceptual development, of method or of intellectual inheritance or indebtedness. Fitzpatrick, in an interview conducted in 2017 in Melbourne with Sundhya Pahuja and Adil Hasan Khan, offers two summary and self-deprecating verdicts: one, 'things get messed up' in the nine years between the two books; the other, 'Foucault wins there [in *Mythology*] and then Derrida wins later on [in *Modernism*]'.[7] *Modernism* doubtless marks the most explicit and extensive working-through of Fitzpatrick's post-structuralist account of modern law, famously constituted (as he puts it in that book) in 'the movement between determination and responsiveness' (2001, p. 6). Doubtless, too, Derrida (especially in Chapter Three) is the more important theoretical reference point in *Modernism*. But, just as it is incorrect (of Fitzpatrick) to say (on his own behalf!) that either thinker 'wins' (for doing so elides his own readerly creativity and figures the relation as one of influence rather than reinterpretation),[8] so too is it misleading to think that Foucault is absent from *Modernism*. The account of modern law as an unresolved alternation between the twin, yet opposed, poles of determinacy (closure, fixity, position) and responsiveness (openness, changeability, contingency) is made primarily through Derrida and the reworked terms of his opposition between law and justice in the essay 'Force of law' (1992). But Foucault figures also in *Modernism*, in a *sotto voce* register, as a prefiguring both of the central argument developed in *Modernism* and of his later reinterpretation in Fitzpatrick's 2009 book, *Foucault's Law*, written with Ben Golder. In both texts, we see Fitzpatrick creatively bringing together what to other readers of Foucault appear unpromising and contradictory statements on law.

In *Modernism*, there is a brief yet telling invocation of some of Foucault's early engagements with the philosophical and literary figures Maurice Blanchot and Georges Bataille. There is a tendency in legal scholarship on Foucault to dwell on those works produced in his so-called 'middle period'. According to the standard tripartite division of his *oeuvre*, Foucault's early work of the 1960s concerned discourse and knowledge, his middle work of the 1970s addressed power and his final work of the late 1970s and early 1980s engaged ethics and subjectivity (Han, 2002, p. 1). Hence, texts like *Discipline and Punish* (1991), the first (yet not the second and third) volumes of the *History of Sexuality* project (1978) and select course lectures at the Collège de France are accorded interpretive primacy. What is hence distinctive about Fitzpatrick's reliance in *Modernism* on texts like 'Maurice Blanchot: The thought from outside' ([1966] 1987) and 'A preface to transgression' ([1963]/1977a) is his derivation from these earlier, more literary (and improperly legal) writings a set of dynamics

[7]The relevant quotations are drawn from the interview referenced in the first note of this paper, at 7:31 and 7:01ff., respectively.

[8]To take Derrida, for example, Fitzpatrick's reading of the seminal essay 'Force of law' is foundational for his own account of law. But it undergoes a translation – not simply into the Fitzpatrickian idiom of determinacy and responsiveness, but in conceptual terms, too, from an opposition between law and justice into one between two opposed dimensions of law itself. See Derrida (1992); Fitzpatrick (2001, p. 76).

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press

that help him to explain the dynamic between law and what challenges, resists or tries to surpass or exceed law. So, for example, Fitzpatrick shows how, in Foucault's 1963 reading of Bataille's work on the theme of transgression and the norm, there is an 'apt ambivalence'. Transgression in one guise appears as 'ruptural … [and as] marking an unsurpassable divide between itself and the norm' – something 'utterly apart from' the solidity of the norm; and yet, in others, it 'bears some relation to the norm' and indeed 'Foucault wants transgression to be a palpable process also' (Fitzpatrick, 2001, p. 59). Rather than disregarding these early texts (which is what almost all legal readers of Foucault do) or taking Foucault's textual equivocations as an opportunity to simplify or reject his views (a similarly widespread propensity), Fitzpatrick wants to tarry with the ambivalences of these texts (which is why, precisely, they are 'apt' for him). 'In all,' he says, 'we can extract from Foucault, with some persuasion, a dynamic in which the norm and transgression confer identity on each other in their mutual surpassing' (2001, p. 60). (I want shortly to return to this readerly 'persuasion', as it is important methodologically.)

In *Foucault's Law* of 2009, written with Ben Golder, Fitzpatrick's account of Foucault is developed yet further. In that book, the relational dynamics of the norm and transgression (with Bataille), and of the outside as it is experienced with Blanchot are drawn centrally into a theoretical account of modern law itself. *Foucault's Law* integrates a reading of these early texts with Foucault's much-discussed works of the mid- to late 1970s on discipline, biopower and governmentality. *Contra* the 'expulsion thesis', Fitzpatrick and Golder seek to show that, whilst law is instrumentally subordinated by the emergent powers of modernity, this is only part of the picture. For them, there is something in Foucault's law that eludes that containment and instrumental subordination. In terms that echo the post-structuralist theory of law developed in *Modernism*, Fitzpatrick and Golder (2009, p. 53) aim to show that the seemingly opposed attributes of modern law that (they) find in Foucault's texts – the fixed and determinate law and the illimitably responsive and incipiently pervasive law, the law that is instrumentally subordinated and the surpassing law that ever eludes total control by any power – are in fact integrally related dimensions of the very same law, fractured and *ir*resolute though it seems at first to be.

I have tried in the foregoing to provide a sketch of Fitzpatrick's three-decades-long reading of Foucault (in published terms as I have presented it here, roughly from 1983 until 2013), which starts by deploying Foucault's accounts of disciplinary subjection to think about both legal subjectivity and the relation between law and power, and then culminates in providing a post-structural account of law set in terms of Foucault's own work. Fitzpatrick's readerly practice is defined by a serious attentiveness to Foucault's ideas on law; a breadth and creativity of textual reference that itself disrupts settled views about what texts are and are not about 'law'; and a generative openness to Foucault's often conflicted prose.

But I want, in these closing remarks, to address an objection to Fitzpatrick's reading of Foucault because it raises central (and illuminating) questions about Fitzpatrick's reading practices. As I have presented this particular reading, Fitzpatrick's approach is characterised not only by an irreverent bringing of diverse texts into conversation (when others would suggest they should be kept apart), but by his working with the tensions, inconsistencies and ambiguities in Foucault's writings (which in other, less deft, hands leads to too-ready reduction and dismissal).[9] In working with the ambivalence of Foucault's texts, Fitzpatrick does not try to synthesise his disparate comments on law into a seamless unity so much as to show that what Foucault is pointing to in his opposed comments is a 'constituent antimony in which [law] is both utterly dependent yet still surpassingly responsive' (Fitzpatrick, 2013, p. 40). Of course, one response to this is that this reading of Foucault is still too Derridean, too artfully Fitzpatrickian, to 'count' as a legitimate reading of Foucault. This begs several fascinating questions about the ethics and practice of reading, and of meaning and interpretation, all of which are refracted in a particular way when we are dealing with a thinker who encouraged his readers to *penser autrement* (to think otherwise) and who professedly wrote 'in order to change [himself]'

[9]For a discussion of these objections to *Foucault's Law*, see Fitzpatrick (2013, pp. 40–41).

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press

(Foucault, 2000, p. 204), imploring us 'not … [to] ask who [he was] … and … [not to] ask [him] to remain the same' (Foucault, 1972, p. 17). In my view, Fitzpatrick's (impeccably Foucauldian) readerly gift to Foucault is hence to keep him alive, to creatively change him whilst keeping him recognisably Foucault. This practice of reading, in which Fitzpatrick reads a thinker otherwise but through their own words, bringing dimensions of their work together to generate new ideas, is both patient and understated. It is slow, as it demands a deep attunement and fidelity to their work. It is slow, also, in that it needs to be performed iteratively across several different texts and contexts in order to take shape (here, over some thirty or so years). It is also subtle and understated. Not so much for Fitzpatrick the monstrous, flashy Deleuzian buggery[10] as the more gentle and dialogic 'persuasion' (as above) of his textual interlocutors, gently teasing unexpected meanings from the archive. Finally, and aptly, it is law-like (in Fitzpatrick's [and Foucault's] 'own' distinctive sense) (Fitzpatrick, 2011, p. 199). For thinkers and works and bodies of thought to stay the same, to stay determinately and recognisably themselves, to persist as they are, much must change. *Vale Peter Fitzpatrick.*

Conflicts of Interest. None

Acknowledgements. I would like to thank both editors of this Special Issue for the invitation to write, David Sugarman in particular for constructive editorial suggestions on a previous draft and Abdul Paliwala for generously sharing a draft of his own article about Peter Fitzpatrick.

References

Baxter H (1996) Bringing Foucault into law and law into Foucault. *Stanford Law Review* **48**, 449–479.

Deleuze G (1997) Letter to a harsh critic. In Deleuze G (ed.), *Negotiations: 1972–1990*, Joughin M (trans.). New York: Columbia University Press, pp. 3–12.

Derrida J (1992) Force of law: the 'mystical foundations of authority'. In Cornell D *et al.* (eds), *Deconstruction and the Possibility of Justice*, Quaintance M (trans.). New York: Routledge, pp. 3–67.

Fine B (1984) *Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques*. London/Sydney: Pluto Press.

Fitzpatrick P (1983) Marxism and legal pluralism *Australian Journal of Law and Society* **1**, 45–59.

Fitzpatrick P (1992) *The Mythology of Modern Law*. London: Routledge.

Fitzpatrick P (1995) Foucault's case: subject and subjection in law. In Smart B (ed.), *Michel Foucault: Critical Perspectives*, Vol. VII. London: Routledge, pp. 222–235.

Fitzpatrick P (2001) *Modernism and the Grounds of Law*. Cambridge: Cambridge University Press.

Fitzpatrick P (2011) Reading slowly: the law of literature and the literature of law. In Buchanan R, Motha S and Pahuja S (eds), *Reading Modern Law: Critical Methodologies and Sovereign Formations*. Abingdon: Routledge, pp. 193–210.

Fitzpatrick P (2013) Foucault's other law. In Golder B (ed.), *Re-Reading Foucault: On Law, Power and Rights*. Abingdon: Routledge, pp. 39–63.

Fitzpatrick P (as completed by Tara Mulqueen, Abdul Paliwala and Anastasia Tataryn) (2020) Ultimate legality: reading the community of law. *Journal of Law and Society* **47**, 363–383.

Foucault M (1972) *The Archaeology of Knowledge*, Sheridan Smith AM (trans.). London: Routledge.

Foucault M ([1963] 1977a) A preface to transgression. In Bouchard DF (ed.), *Language, Counter-Memory, Practice: Selected Essays and Interviews*, Bouchard DF and Simon S (trans.). Ithaca: Cornell University Press, pp. 29–52.

Foucault M (1977b) Intellectuals and power: a conversation between Michel Foucault and Gilles Deleuze. In Bouchard DF (ed.), *Language, Counter-Memory, Practice: Selected Essays and Interviews*, Bouchard DF and Simon S (trans.). Ithaca: Cornell University Press, pp. 205–217.

Foucault M (1978) *The Will to Knowledge*, Vol. 1 of *The History of Sexuality*, Hurley R (trans.). Harmondsworth: Penguin.

Foucault M (1980a) Powers and strategies. In Gordon C (ed.), *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, Gordon C (trans.). Harlow: Longman, pp. 134–145.

Foucault M (1980b) Truth and power. In Gordon C (ed.), *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, Gordon C (trans.). Harlow: Longman, pp. 109–133.

Foucault M ([1966] 1987) Maurice Blanchot: the thought from outside. In Foucault M and Blanchot M (eds), *Foucault/Blanchot*, Massumi B (trans.). New York: Zone Books, pp. 9–58.

Foucault M (1991) *Discipline and Punish: The Birth of the Prison*, Sheridan A (trans.). Harmondsworth: Penguin.

[10]That is, to 'tak[e] an author from behind and giv[e] him [sic] a child that would be his [sic] own offspring, yet monstrous'. See Deleuze (1997, p. 6).

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press

Foucault M ([1966] 1994) *The Order of Things: An Archaeology of the Human Sciences*, Sheridan A (trans.). New York: Vintage Books.

Foucault M (2000) Interview with Michel Foucault. In Faubion JD (ed.), *Power: Essential Works of Foucault, 1954–1984*. New York: The New Press, pp. 239–297.

Foucault M (2007) *Security, Territory, Population: Lectures at the Collège de France 1977–78*, Burchell G (trans.). Basingstoke: Palgrave Macmillan.

Golder B and Fitzpatrick P (2009) *Foucault's Law*. Abingdon: Routledge.

Golder B and Fitzpatrick P (2010) The laws of Michel Foucault. In Golder B and Fitzpatrick P (eds), *Foucault and Law*. Farnham: Ashgate, pp. xi–xxvi.

Gordon C (2013) Expelled questions: Foucault, the left and the law. In Golder B (ed.), *Re-Reading Foucault: On Law, Power and Rights*. Abingdon: Routledge, pp. 13–38.

Han B (2002) *Foucault's Critical Project: Between the Transcendental and the Historical*, Pile E (trans.). Stanford: Stanford University Press.

Hart HLA ([1961] 2012) *The Concept of Law*. Oxford: Oxford University Press.

Hirst PQ (1986) *Law, Socialism and Democracy*. London: Allen & Unwin.

Hunt A and Wickham G (1994) *Foucault and Law: Towards a Sociology of Law as Governance*. London: Pluto.

Koopman C and Matza T (2013) Putting Foucault to work: analytic and concept in Foucaultian inquiry. *Critical Inquiry* **39**, 817–840.

Mulqueen T (2017) Naturalising the myth: Hart, biopolitics, and the body corporate. *Australian Feminist Law Journal* **43**, 251–272.

Nealon JT (2008) *Foucault beyond Foucault: Power and Its Intensifications since 1984*. Stanford: Stanford University Press.

Patton P (1979) Of power and prisons. In Morris M and Patton P (eds), *Michel Foucault: Power, Truth, Strategy*. Sydney: Feral Publications, pp. 109–147.

Poulantzas N (2000) *State, Power, Socialism*, Camiller P (trans.). London: Verso.

Rose N and Miller P (1992) Political power beyond the state: problematics of government. *British Journal of Sociology* **43**, 173–205.

Rose N and Valverde M (1998) Governed by law? *Social & Legal Studies* **7**, 541–551.

Rose N, O'Malley P and Valverde M (2006) Governmentality. *Annual Review of Law and Social Science* **2**, 83–104.

Sedgwick EK (2003) Paranoid reading and reparative reading, or, you're so paranoid, you probably think this essay is about you. In Sedgwick EK (ed.), *Touching Feeling – Affect, Pedagogy, Performativity*. Durham: Duke University Press, pp. 123–151.

Smith C (2000) The sovereign state v Foucault: law and disciplinary power. *The Sociological Review* **48**, 283–306.

Unger RM (1976) *Law in Modern Society: Toward a Criticism of Social Theory*. New York: The Free Press.

Walby K (2007) Contributions to a post-sovereigntist understanding of law: Foucault, law as governance, and legal pluralism *Social & Legal Studies* **16**, 551–571.

Waldron J (2012) How law protects dignity. *Cambridge Law Journal* **71**, 200–222.

Wickham G (2002) Foucault and law. In Banakar R and Travers M (eds), *An Introduction to Law and Social Theory*. Oxford: Hart, pp. 249–265.

Cite this article: Golder B (2021). How to do things with Foucault (legally). *International Journal of Law in Context* **17**, 44–50. https://doi.org/10.1017/S1744552321000203

https://doi.org/10.1017/S1744552321000203 Published online by Cambridge University Press