

Was Foucault a Liberal and Should We Care?

Author : Martin Krygier

Date : July 24, 2017

Ben Golder, [Foucault and the Politics of Rights](#) (2015).

Foucault and Rights is intriguing and impressive at two levels: one exegetic; the other political. They can only be separated analytically, and they overlap and are interwoven in this book, but beyond a brief characterization of the exegetical virtues of the work, I will focus on politics, for two reasons. The first is simply that I am not a specialist on Foucault's *oeuvre*. So I will not pretend to provide for Golder what he does so well for Foucault: an immanent exegetical critique. I will just say that *Foucault and Rights* is a masterly account and meticulous excavation of some of the deeper layers of Michel Foucault's thought, postulating and persuasively arguing for underlying coherences in the face of apparent surface inconsistencies. It is exemplary immanent critique: immanent because the aim is primarily to explore the internal theoretical resources of Foucault's thought to situate what he has to say about rights; and critique in a classical sense that does not immediately imply disagreement, still less hostility but is compatible with deeply sympathetic archaeological recovery and reconstruction; to use Golder's phrase from another context, 'critical affirmation'. The exegesis is assured, authoritative, intimately versed.

A second reason to think separately about the political concerns of this work is that they are important and unconcealed motivators – not determinants but motivators – of the interpretation Golder arrives at. For Foucault's late invocations of rights present not merely an apparent problem of intellectual coherence, given his early critiques of what many have taken to be the metaphysical grounds of liberalism generally, and rights talk more specifically, but an apparent source of both political embarrassment to adepts and disciples of the earlier Foucault, and unembarrassed glee mixed with *Schadenfreude* to erstwhile liberal critics, who are pleased he had come to his senses at last.

People of a certain age, and alas I am one, might have a feeling of *déjà vu* all over again, confronted with this predicament. We have been here before. There was Althusser's strenuous and Stalinist insistence on an 'epistemological break' in Marx's thought, to avoid being sucked into his political embarrassing critical philosophy. Later, and at the darkest extreme, they will remember the discomfort of many of Heidegger's philosophical admirers or those of Paul de Man, when their political allegiances were revealed. Altogether less sinister, and closer to our subject, is the furore that that doyen of Marxist historians, E.P. Thompson, caused when in *Whigs and Hunters*, a book which for 258 of its 269 pages would have raised no controversy on the Marx-inspired Left, ended with an eloquent paean to the rule of law as a 'cultural achievement of universal significance'. There would not have been much of a fuss, or even notice, if Hayek had written such a coda, but it was deeply disquieting to many who considered themselves to have been on Thompson's team. Many of his erstwhile supporters found these eleven pages in a life's work inexplicable, and if explicable unforgivable. He had gone over to the Dark Side. My own feelings in 1976 were a bit different. I became fond of Thompson precisely at that time, and for that reason, and have remained so. Reading Golder's account, it's beginning to happen again with Foucault.

I should come clean. I like liberal rights. My aim will be less to engage with the detail of Golder's exposition of Foucault, which, to repeat, I find meticulous, impressive and persuasive, than with the Other of the book: the liberal challenge. Golder nowhere denies that Foucault made numerous, often eloquent, invocations of rights in his later political interventions; indeed they are the occasion of his book. But he resists any interpretation of these as a conversion to liberalism. At his most positive, he

sees in them ‘critical affirmation’ of rights talk. (P. 154.) As the book goes on, however, affirmation pales in the stronger light of subversion. For Golder finds Foucault not appropriating or subscribing to liberal rights ‘in a way that is consonant with and thoroughly contained by the ordering idioms of liberal political thought ... [but rather] in ways that might seek playfully to contest, mimic, subvert, or tactically outrun them, that is, to read them performatively and put them to different, contrary uses.’ (P. 67.) He develops ‘a critical, subversive, appropriatory praxis of rights which, far from denying their value or utility, actually celebrates the ways in which they can be put to different, and contrary, uses.’ (P. 159.)

As the argument picks up speed, the language becomes increasingly militarized. On Golder’s account, explicitly drawing on Clausewitz, Foucault’s use of rights is ‘tactical’, ‘instrumental’, not ‘strategic’, they are ‘deployed’ rather than respected; in the service of subversion, resistance, and ‘critical counter-conduct’. Affirmation is never rejected in this account, but I must say that by the end of the book it is pretty tightly squeezed; with affirmation of this sort, you might prefer some rejection. Thus, although Foucault ‘expresses his political interventions via the liberal idiom of rights, [he] ‘performative[ly] undermine[s]’ them in the process.’ (P. 20-21.) Again, he employs law ‘(or any other assemblage) [as] a kind of insubordinate, disobedient, and potentially subversive deployment that plays the game in a way that does not respect the stated purpose of the game and hence troubles and possibly undermines it.’ (P. 117.)

Why is it so important to emphasize the critical, subversive, ruptural, possibilities of Foucault’s invocation of rights and human rights so much more than the apparent plain and simple affirmation of them that appears to occur in his critiques of Iranian and Polish dictatorship, arbitrary treatment of prisoners, and so on, where subversion of rights seems the last thing on his mind? One can learn that from the contrasts Golder employs in the last pages of his book, and the language Golder uses to characterize what is at stake. His own interpretation is, he says, ‘a far more revealing (and convincing) framework with which to view Foucault’s late turn to rights than one of a resigned and defeatist rapprochement with an anti-utopian liberalism of human rights and rule of law promotion.’ (P. 154.) Golder offers ‘an antidote’ to the ‘glib reclamation’ of Foucault’s writings ‘as “liberal”’. Foucault does not ‘suddenly pick up the tools of liberalism because of a Damascene, utopian faith in their possibilities. Nor does he turn to rights disappointedly because revolution has failed.’ (P. 155.) The way Golder sets up the options, if Foucault can’t be reclaimed as a practitioner of ‘critical counter-conduct’, the alternative would seem to be that he must be a liberal, with all the commitments, ontological, epistemological, moral, economic, and above all political, of the species. And who wants that?

In one footnote, Golder concedes that his account of liberalism might not be as close or meticulous as his rendering of Foucault, but he says fairly enough that Foucault, not liberalism, is the subject of his book. (P. 171-72.) And yet, liberalism, or Golder’s substantial characterizations of it, its presuppositions and its contrasts with what Golder finds to be laudable in Foucault’s deployment of some of its instruments, are the constant foils with which his own account is contrasted. Liberalism, or ‘orthodox’ liberalism, is assumed to carry all sorts of identifying commitments, metaphysical, sociological, political, and normative. If we were to concede that Foucault had joined the camp of liberals in his eloquent and passionate invocations of rights, we are led to believe, he would have to share all those commitments, which we don’t like, and some of which in his earlier writings he had trenchantly and influentially criticized.

I believe, by contrast, that to pit Foucault’s thought against such a homogenized ‘liberal’ package can mislead for at least two reasons. First, as Stephen Holmes has observed, ‘One of the greatest obstacles to a fresh understanding of [liberal] rights is the tyranny of false polarities. Political theory lives in thrall to a sequence of binary schemes’.¹ Secondly, and in part because of this stark sort of polarization, because the noun can too easily at once include too much and exclude too much, it is both over and under inclusive. The universe of political choice might well be miscast if too quickly boxed into one or

another allegedly distinct and self-sufficient, worse still exhaustive or exclusive, style or tradition of political thought.

A few examples. Golder treats liberalism as an ideology that has deep ontological and other commitments, whereas Foucault by supposed contrast 'treats liberalism not so much as an ideology but rather as a way of governing.' (P. 69.) The same might be said, however, of Montesquieu and Tocqueville, Holmes and Judith Shklar, for whom the 'overt purpose [of liberal interventions]... is purely political.'² Again, among many splendid Foucaultian aphorisms that I have now learnt from Golder, there is: 'My point is not that everything is bad, but that everything is dangerous.' (P. 103.) Lord Acton, Shklar and Holmes could not have said it better; they might be proud to have said it as well.

We are told liberals and particularly liberal human rights theorists are disposed 'not to condemn the structural violence of poverty or inequality, but rather to expose practices like state killing and torture.' (P. 151.) But what then of the concerns of Rawls, Sen, Waldron, Holmes, and American liberals as distinct from conservatives, who fight with libertarians over just such matters as the structural violence of poverty and inequality (and also dislike torture)? Again, liberals are taken to be stuck with a fundamental and intertwined dichotomy between the individual and the state, whereas Foucault 'problematizes the liberal dyad of state and individual.' (P. 130.) He is hardly the first to do that. It puts him square in the camp of his French ancestors, Montesquieu and Tocqueville, liberal giants who constantly 'subverted' such a dyad, obsessed as they were with the significance of 'intermediary groups', civil associations, the tyranny of the majority, and so on. Finally, Foucault is praised for challenging existing arrangements without relying upon a 'positive' (substantial and substantializing) normative vision of what the world should be.' Rather than postulating some specific alternative, his enterprise is, in terms of his coinage, "'nonpositive affirmation" ... "essays in refusal." ... Foucault's critical stance commits him to neither advocacy nor rejection of either of these elements [foundationalist account of subjectivity and a juridical theory of sovereignty] of rights discourse.' (P. 37.) His 'mobile and iterative understanding of freedom refuses, as per liberal or utopian understandings, to reify the concept or to mark it as foundational or as a finished state of affairs. Freedom is a ceaseless work without any guarantee.' (P. 112.) How welcome would this statement be to the tradition that Judith Shklar expounds and endorses as 'the liberalism of fear', which:

'concentrates on damage control ... one may be less inclined to celebrate the blessings of liberalism than to consider the dangers of tyranny and war that threaten it. For this liberalism the basic units of political life are not discursive and reflecting persons, nor friends and enemies, nor patriotic soldier-citizens, nor energetic litigants, but the weak and the powerful. And the freedom it wishes to secure is freedom from the abuse of power and intimidation of the defenceless that this difference invites. (P. 9.)

The liberalism of fear, Shklar goes on to insist,

does not ...offer a *summum bonum* toward which all political agents should strive, but it certainly does begin with a *summum malum*, which all of us know and would avoid if only we could. That evil is cruelty and the fear it inspires, and the very fear of fear itself. (P. 10-11.)

No form of liberalism has any business telling the citizenry to pursue happiness or even to define that wholly elusive condition. It is for each one of us to seek or reject it in favour of duty or salvation or passivity, eg. Liberalism must restrict itself to politics and to proposals to restrain potential abusers of power in order to lift the burden of fear and favour from the shoulders of adult women and men. (P. 13.)

Of course, not all liberals agree with Shklar. Some have metaphysical commitments, others different political commitments. But that is part of my point. Liberalism is a broad church. Foucault comes to condemn tyranny in Iran and Poland, for example, in eloquent, incisive, and highly liberal terms; he says

in conversation with Jonathan Simon (and it appears to the latter's surprise) that 'we could define the right as the limits of the exercise of power: limits which are implied by the definition, the goals, and the rational structure of power'.³ I think he should simply be praised for that without fear that he is hitching up to a host of commitments which many liberals who agree with him do not share.

I conclude with a semantic point that has, I think, more than semantic significance. If I were to voice one criticism of the semantics of Golder's book, it is that the major choices it posits are between Procrustean collective nouns rather than differentiating adjectives. I think it should be the other way around. If the question is whether the late Foucault embraced liberalism, became a liberal, then the answer seems to force a huge choice, which those unwilling to sign up to a laundry list of 'liberal' commitments might balk at. But if you ask whether the attitudes he expressed, and the sensibility he expressed in his writings on Iran and Poland etc are *liberal*, then it seems to me simply and wholly accurate to say: of course they are. And I don't find much 'critical counter conduct' in them.

I was in Poland at roughly the same period as Foucault – post-Solidarity; pre-post Communist – and there is not a word he wrote with which I would disagree, though I could not have said it as well. These are liberal sentiments, and there are hosts of people of *illiberal* sentiment who would then, and do now, reject them – in Poland and elsewhere, particularly but not only in our Trumped-up world. In my view, such liberal sentiments should be sources of celebration, not embarrassment. One should be less uneasy to find them displayed without subversion, rupture, playfulness, than to celebrate them, defend them, worry about their fragility, treat them with utmost seriousness, and strive to protect them. Because they were then and they are now precious, and under threat all over the world. As I read these invocations of rights, in all but the somewhat overrefined remarks on euthanasia that Golder takes to be exemplary and that seem to me excessively 'playful' about unplayful states of affairs like dying in excruciating ways, Foucault understood all this and was admirably liberal in his responses to them. In the light of that, whether or not he can be convicted of being a card-carrying liberal, a liberal *pur sang*, is the least of my worries.

1. 'The Liberal Idea', in Stephen Holmes, **Passions and Constraint: On the Theory of Liberal Democracy** 28 (1995).
2. 'The Liberalism of Fear', in Judith N. Shklar, **Political Thought and Political Thinkers** 15 (Stanley Hoffman ed., 1998).
3. Michel Foucault, Jonathan Simon & Stuart Elden, *Danger, Crime and Rights: A Conversation between Michel Foucault and Jonathan Simon*, 34 **Theory, Culture & Soc'y** 3, 21 (2017).

Cite as: Martin Krygier, *Was Foucault a Liberal and Should We Care?*, JOTWELL (July 24, 2017) (reviewing Ben Golder, **Foucault and the Politics of Rights** (2015)), <https://juris.jotwell.com/was-foucault-a-liberal-and-should-we-care/>.