



Introduction: Governing the Political: Law and the Politics of Resistance

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Abstract

The special issue addresses several overlapping though not exclusive themes: Foucault's theorization of modern power and in particular, his thinking in relation to his lectures on governmentality, the politics of resistance, and processes of neoliberalism. The contributions are animated by several questions: How do citizens and marginalized (or stateless) people negotiate law and regulation from the margins through experiences of assimilation or exclusion?; What role does racialization play in these processes?; How has neoliberalism or new processes of globalization opened up questions of individualism, freedom, autonomy, responsabilization, empowerment, rights (in several different spheres): the environment, queer and sexual politics, policing and protest, governmental politics, migration, refugee protection, and humanitarianism?

Key words

Neoliberalism; governmentality; racial governance; politics of resistance

Resumen

Este número especial se ocupa de diversos temas que se solapan pero no son exclusivos: la teorización de Foucault del poder contemporáneo y, más concretamente, su pensamiento sobre sus lecciones acerca de la gobernabilidad, las políticas de resistencia y los procesos de neoliberalismo. Los artículos están motivados por diversas preguntas: ¿Cómo negocian los ciudadanos y los pueblos marginalizados (o sin Estado) el derecho y la regulación desde los márgenes a través de experiencias de asimilación o exclusión? ¿Qué rol juega la racialización en estos procesos? ¿Cómo el neoliberalismo o los nuevos procesos de globalización han abierto preguntas sobre el individualismo, la

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libertad, la autonomía, la responsabilización, el empoderamiento, los derechos (en distintas esferas), el medio ambiente, las políticas *queer* y sexuales, la labor policial y las protestas, políticas gubernamentales, migración, protección de refugiados, y humanitarismo?

Palabras clave

Neoliberalismo; gubernamentalidad; gobernanza racial; políticas de resistencia

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Introduction

This special issue has its origins in the workshop, *Governing the Political: Law and the Politics of Resistance* held at the IISL in May 2018 chaired by Dr. Carmela Murdocca (Sociology, York University) and Dr. Laura Kwak (Social Science, York University). Dr. Deborah Brock (Sociology, York University) was central to developing the ideas and thematics of the workshop and to its organization. The intention of the workshop was to bring together several overlapping though not exclusive themes: Foucault's theorization of modern power and in particular, his thinking in relation to his lectures on governmentality, the politics of resistance, and processes of neoliberalism. The workshop was animated by several questions: How do citizens and marginalized (or stateless) people negotiate law and regulation from the margins through experiences of assimilation or exclusion?; What role does racialization play in these processes?; How has neoliberalism or new processes of globalization opened up questions of individualism, freedom, autonomy, responsabilization, empowerment, rights (in several different spheres): the environment, queer and sexual politics, policing and protest, governmental politics, migration, refugee protection, and humanitarianism? Many of the contributions are particularly concerned with racial governance – a mode of analysis that examines policies, practices, procedures and processes where genealogies and histories of racialization, settler colonialism and racial violence find expression in the ethical and epistemological foundations of law and governance.

Foucault was interested in government as an activity or practice (who can govern; what governing is; what or who is governed). In this sense, political power is not seen as hegemonic and located in the state. His analysis of governmentality and modern power encouraged thinking about power as increasingly disentangled from the state. This approach includes non-state authorities, informal power systems, new forms of citizenship and surveillance, and the role of quasi or non-governmental organizations. This approach to theorizing power can be viewed as augmenting, subverting, contesting or competing with the centrality of state power. He was trying to find new ways of analyzing political power developing outside of the state, without ignoring in the process, the importance of the state and the doctrines and legitimacies associated with it. Inspired by these ideas, the contributions in this issue are interested in how individuals and larger institutional processes are implicated in everyday forms of power and regulation within and beyond the state.

The contributions explore how racial governance and forms of governmental power in relation to law and regulation have a particular impact on Black people, Indigenous people, people of colour, the economically marginalized and stateless people. In this regard, tending to the "newness" of neoliberal economic terms means also attending to the long duree of colonialism, empire and slavery in which the commodification of human life has always been central. Recognizing the "newness" of neoliberalism may mean recognizing these processes as not entirely "new" iterations of a longer genealogy of colonialism and empire (as post-colonial scholars have shown). Wendy Brown describes neoliberalism as "peculiar form of reason that configures all aspects of existence in economic terms, and these terms are quietly undoing basic elements of democracy" (Brown 2015, 17). She suggests that these elements include: "vocabularies, principles of justice, practices of rule, and above all, democratic imaginaries" (Brown

2015, 17) Neoliberal reason, she argues, is “ubiquitous today in statecraft and the workplace, in jurisprudence, education, culture, and a vast range of quotidian activity” – leading to the “*economization*” of political activity (Emphasis in original. Brown 2015, 17). Neoliberalism’s effects are neither seamless nor uniform across the globe particularly when we attend to divisions between the advanced capitalist economies of the Euro-Atlantic world and those of the Global South or by gendered divisions of labor.

The resulting special issue is a combination of nine papers whose first versions were originally presented at that workshop, and one additional paper submitted after the workshop. This collection addresses racialization, law, governance, neoliberalism and the politics of resistance and offers substantive engagement from a range of global contexts including Canada, Palestine, the United States, Uganda, Italy, and Colombia. The first three articles are particularly attentive to neoliberalizing rationalities of government. By drawing on organizational reports, review studies, and archival documents, **Masoumi** examines the connections between refugee protection, economic migrants, and neoliberal logics of immigration administration in Canada. The author makes the case that the neoliberal politics of refugee protections “was a racialized and racializing project”. In the context of refugee protection, the author shows how the rise of “‘*economization*’ of political life” (Brown 2015, 17) has favoured the efficient and cost-effective bureaucratic processing of refugee claims that trumps any “humanitarian concerns or even symbolic gestures to the ideal of universal equality”. Masoumi traces how for the Immigration and Refugee Board (IRB), efficient claim processing became entangled with systematic deterrence of economic migrants or “fraudulent” claimants that have been politically and legally produced as distinct from “real” or “deserving” refugees. The author argues that such “efficient” methods of targeting economic migrants have relied on racialized formulations of certain national groups that featured prominently in “the Canadian racial imaginary”. That is, despite the removal of race, ethnicity, and country of origin as legal criteria of exclusion from immigration to Canada in 1976, such nation-based methods of identifying potential “fraudulent” claimants from countries such as Jamaica and Trinidad perpetuated “long-standing racialized imaginaries”.

Oliver and Boyle examine recent trends in the logic and practices governing international refugee protection and management. Examining links between refugee governance, neoliberalism and resilience, they explore how, and through what particular means, the UN Refugee Agency (UNHCR) increasingly deploys its mandate of refugee protection through linking a logic of self-reliance with the newer idea of resilience as a particular rationality of governance. The context of Uganda is used as a case study to address the constitutive elements of resilience which include micro (individual) and macro (societal) elements. They show that the linking of “the more entrenched concept of self-reliance” with emerging discourses and governmental processes prioritizing “resilience” works to further intertwine UNHCR’s long-standing humanitarian mandate with the “developmental goals promoted by other global aid organizations such as the World Bank and the Food and Agricultural Organization. This shift is of significance and consequence it shows that the mandate of UNHCR because it reveals that the organizational focus on the “protection of refugees” has given way to “ensuring an optimal social and economic environment through multi-stakeholder

development initiatives in host countries.” The discourse of resilience in this context thus enables the governance of refugees within and outside of settlements.

In the sphere of health law, biopolitical governance and neoliberal policies and practices are exercised and collide through practices concerning the life and living of human beings. In this way, biopolitical governance determines the continuum of health/disease/illness/death as well as opening up new possibilities for redefining the concept of life and death. As Foucault explains, life itself becomes the field of political struggle. **Finco** outlines how the concepts of freedom autonomy intersect with rights regarding health and well-being. In particular, using Social Systems Theory, he explores the Italian law on advance directives and the living will and shows how the form and content of self-determination is expressed by individuals through the operationalization of the living will. He argues that the Italian law on the living will reveal new forms of resistance that bind freedom, autonomy and an ethical responsibility towards others. He shows how “individual autonomy” can be “exercised together with responsibility towards others” thus “balancing individual needs and claims with social solidarity.”

The next three articles consider the limits of liberalism and inclusionary politics that function to reproduce racial inequity and sustain racial hierarchies. **Kwak’s** contribution challenges the assumption that Canada has avoided the rise of right-wing populism and explores how white nationalism is tethered to the fiction that Canada has been a raceless society. After reviewing the myth of racelessness and the history of right-populism in Canada, the author examines how the Reform Party of Canada conceptualized “the people” in racialized terms. Kwak investigates how the Conservative Party of Canada’s appeals to symbolic “diversity” and denial of systemic oppression have enabled more overt forms of racism. By examining the recent rise of racist hate crimes in Canada, the author makes the case that a direct link can be traced between the Conservative government’s seemingly neutral discourses about the preservation of Canadian “heritage” and “common values” and the re-emergence of right-wing populism and the re-emboldening of white nationalism in Canada.

Bryan’s article shows how diversity is operationalized in police responses to hate crime in Ontario, Canada. Drawing on extensive interviews with police officers, this article examines how commitments to, and celebrations of, diversity embedded in police institutional and governance structures intersect with police response to hate crime. Bryan shows how hate crime policies and specialized training programs in Ontario were developed in relation to two central foci: 1. Traditional policing concerns involving proper investigative techniques, evidence collection, documentation, and officer roles and responsibilities; and 2. Emerging concerns regarding victim care, community relations, and commitments to racial and cultural diversity.

Tompkins’ contribution provides insight into how anti-Black racism in Canada has been perpetuated by the mainstream LGBT movement, specifically and by liberal multicultural mythology, more broadly. As crucial political context, Tompkins traces the history of Pride to queer resistance against systemic police regulation and violent bathhouse raids in the 1980s. He also notes that the Toronto chapter of Black Lives Matters (BLMTO) sit-in at the city’s 2016 Pride parade was a call to action against anti-Black racism in Pride as well as the documented and intensifying police harassment and murders of Black Canadians at the hands of the police. Through a critical discourse

analysis of public debate and mainstream media coverage of demonstrations led by BLMTO, Tompkins argues that this opportunity for public discussion about LGBT and racial equality was instead represented as an affront to Pride and the Toronto Police Service (TPS). Tompkins identifies three major themes invoked in the popular condemnation of BLMTO: a demand for police inclusion within future Pride parades, rhetoric of criminal conduct, which functioned to associate Blackness with crime, while implying that “solidarity with queer populations is necessarily separate from concerns about anti-Black racism,” and an accentuation of positive LGBT/state relations. The author argues that the pervasiveness of anti-Black racism in Canada has become sustained by liberal discourses of queer equality. That is, in the Canadian context, multiculturalism, neoliberalism, homonationalism, and the LGBT movement’s shift away from challenging sexual regulation towards a politics of assimilation have functioned “to cement notions of freedom and equality that eschew the reality of systemic racism”.

The remaining four contributions critically explore how racial governance is sustained through the convergence of humanitarianism and settler colonialism while providing grammars, logics, and paradigms for resistance politics and ordering the world otherwise. Through an incisive analysis of humanitarian governance in Palestine as part of a broader racial project of settler colonial displacement, **Vadasaria** traces how “an Indigenous Palestinian society with historical ties to land come to be governed as refugees external to the land.” By examining a set of United Nations resolutions and progress reports, Vadasaria explores how the right of Palestinians to return and land-based reparative justice became replaced by and suspended through humanitarian discourses and institutions. The author considers how these humanitarian structures worked to produce Palestinians as refugees instead of as Indigenous subjects in a struggle for sovereignty, thereby rendering “Palestinian personhood and recourse to justice illegible”. Vadasaria draws our attention to persistent racial violence, dispossession, land confiscation, and subjugation that is authorized at the nexus of settler colonial and humanitarian governance. The author also urges readers to think about the claim to return as an ontological claim, that is, as a radical reclamation of the human and as a “decolonial grammar of world-making,” which would engender configurations of life, otherwise.

Murdocca explores narratives of humanitarian compassion as rendered intelligible through the relational intersecting concerns about Syrian refugees and the suicide crisis in the Indigenous community of Attawapiskat, Ontario. Relationality is key to showing these connections since a relational analytic compels an approach that recognizes how particular subjects are differently positioned in relation to settler colonialism and racial capitalism. Although the issues at stake in both contexts are two distinct national and community concerns, the challenges in both cases work to elaborate a larger national story concerning breaches in the ethical contours of compassionate humanitarian governance. Fuelled by a combination of anti-refugee rhetoric, racism and ongoing colonialism experienced by Indigenous people and communities, public and media discourse reveals how humanitarian governance is constitutive of the genealogy of settler colonialism. She shows that through examining the political genealogy of humanitarian governance in white settler colonialism assists in revealing the centrality of racial colonial violence in producing public and media discourse that is contingent

upon the relational currencies of anti-refugee rhetoric, racism and humanitarian compassion. As expressions of a grammar of racial difference in liberal settler colonialism, these discourses ultimately reveal how racial colonial violence is constituted through the genealogy of humanitarianism.

By drawing on the Denise Ferreira da Silva's (2010) critique of the normative "sociologies" of western law and its universal citizen-subject of right, **Rhodes** mobilizes the concept of "chrono-logics" to attend to the dominant logics of temporality, including nationalist, militaristic, and neoliberal conceptions of the past, present, and future that have been sanctioned by the Colombian state. For instance, ensconced in national narratives about globally competitive economic growth, investment, innovation, ecotourism, and "rural development projects" has been the violent targeting of human rights defenders and land reform activists as armed insurgents requiring extermination. This project has disproportionately impacted indigenous, afro-Columbian, and mestizo rural populations whose "archives of knowledge that chronicle local histories *otherwise* constitute a threat to the governmentality of the state knowledge/power apparatus". The author elucidates a "chrono-logics" *otherwise* in the form of two distinct rights claims that challenge official state claims on the future: (1) the principle of the "right to a distinct vision of the future" in Colombia's black Pacific movement and epistemologies; and (2) the legal claim of the right of future generations in a historic 2018 lawsuit brought against the government, which followed the assignment of legal personhood to natural elements such as the Amazon Forest. Rhodes makes the case that these temporal alterities "refuse the logics of settler colonial temporality," provide "the grammars of disobedience," and offer the conditions of possibility for "the survival and flourishing of diverse lifeworlds and futures".

Collins' contribution shows us that the current era of the Anthropocene is characterized by unprecedented disruptions in the ecosphere which will mean that our current modes of living on earth are unsustainable. The concept of eco-governmentality refers generally to natural and environmental processes incorporated in state power at a local and global scale.

Through making use of existing law and governance structures, Collins shows how three transformative avenues of resistance – Indigenous law, the resurgence of Western ecological thought and the emergence of a new paradigm of "ecological law" – offer substantial pathways to radically re-imagine our current ecological realities. Indigenous legal orders express respectful relations between humans and the ecological community. Western legal thought requires a rehabilitation of deeply rooted ecological principles and practices and the emerging field of ecological law offers robust pathways to reconsider "ecological legal orders" that demand a reconsideration of law and governance in a manner that redefines ecological citizenship to "will prioritize the interests of living legal persons (be they human or non-human) over the inanimate corporation."

Together, these essays explore how critical socio-legal scholars and advocates have a role and responsibility for contributing to a politics of resistance and change. We are grateful to all contributing authors and reviewers for their rigorous engagement and insights.

References

Brown, W., 2015. *Undoing the Demos: Neoliberalism's Stealth Revolution*. New York: Zone Books.