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## Not asking the law question

### Abstract

In *Asking the Law Question* Margaret Davies launches border raids on the "isolationist mentality" of the law which mystifies its own specificity and insists on the law's separateness from other forms of knowledge and practices. Davies' fascination with parameters, borders, boundaries and constraints manifests itself textually as a constant play of multiple insides and outsides. She confronts the law's exclusiveness by challenging its systematic exclusions, and she tests the limits of her own inclusion within the law by dispensing with its traditional distinction between what is appropriate in a legal textbook and what is not. Davies' border-crossings - her (parenthesized) lighthearted banter, her candid admissions, her stories, her eclectic sources, her minimal use of cases, her determination not to baffle and not to bore, her meticulous conceptual unpicking, and her endless questioning - distinguish her text from the legions of soporific law books which collect dust in law libraries. Here is a volume students might actually put down before they nod off. This is a pedagogical tour de force, considering Davies is cross-pollinating legal theory with post-structuralism and deconstruction, all of which are conceptually dense and complex fields.

# NOT ASKING THE LAW QUESTION

Joelle Chenoweth

Margaret Davies. *Asking The Law Question*. Sydney: The Law Book Company, 1994. \$42.00

In *Asking the Law Question* Margaret Davies launches border raids on the “isolationist mentality” of the law which mystifies its own specificity and insists on the law’s separateness from other forms of knowledge and practices. Davies’ fascination with parameters, borders, boundaries and constraints manifests itself textually as a constant play of multiple insides and outsides. She confronts the law’s exclusiveness by challenging its systematic exclusions, and she tests the limits of her own inclusion within the law by dispensing with its traditional distinction between what is appropriate in a legal textbook and what is not. Davies’ border-crossings - her (parenthesized) lighthearted banter, her candid admissions, her stories, her eclectic sources, her minimal use of cases, her determination not to baffle and not to bore, her meticulous conceptual unpicking, and her endless questioning - distinguish her text from the legions of soporific law books which collect dust in law libraries. Here is a volume students might actually put down before they nod off. This is a pedagogical *tour de force*, considering Davies is cross-pollinating legal theory with post-structuralism and deconstruction, all of which are conceptually dense and complex fields.

Davies is intent on bringing down the rhetorical barriers which guarantee the law’s “isolationist mentality”, and her text bears down on the arbitrariness

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of the law's arsenal of distinctions. She targets the law's illusion of its difference: its insistence on the insularity of its discourse, on the objectivity of its agents, and on the independence of its processes from political and social contingency. It is a difference which depends on rhetoric for its effects. As an effect of language this difference is reduced to poetics. It is surprising then, that when the barriers between law and non-law are dismantled, when the artificial distinctions are swept aside, that when the law's difference is deconstructed, the law doesn't simply cease to be useful as a way of talking about certain things.

She turns her back on the institutional specificity of the law and this has a radical consequence: it enables her to confer an extraordinary level of generality onto the law. When the barriers are down the law is so like everything else that it becomes everything else. Who needs the "sign" when the law is at hand? : "... isn't a law a form and a content, a letter and a spirit, a signifier and a signified? Can't we say that concepts are formed by certain laws, that is, by the processes of drawing a boundary and excluding an outside? Isn't our conceptual system in fact a legal system ... Isn't what we study as 'law' in law school actually continuous with all sorts of other normative systems in society? In the end, isn't a sign actually a law? Both signs and laws, in the end, operate as constraints, boundaries"(240). One might well ask: "whatever happened to asking the law question?"

Boundaries were made to be broken. Or should that be laws? As it turns out, they are one and the same, at least according to Margaret Davies. But what if it is not the law that is broken, but rather the boundaries which differentiate the law from what it is not? In the first case, it is when the law is broken that its limit is activated, so in a sense you could never hope to break the back of the law by simply breaking the law. Rather, it is the reverse. In the case of breaking the law's boundaries, ceasing to differentiate the law from what it is not suggests, not that it ceases to exist, but that it risks becoming everything. In *Asking the Law Question* Davies takes the risk. However, in Davies' case, this risk does not correspond to a future eventuality, rather it is a *fait accompli*, or perhaps one of life's fundamental realities: "Law is an end because it imposes constraints - it tells us what to think, how to act, what to wear, and who to be. . . . Law gives us our identities - we live the law, it shapes our beings" (275), and surely that process is as old as the world is young.

What if one considered that the very possibility of describing the law as everything which lends our life definition is itself not so much the discovery of a fundamental principle, but rather the effect of a very specific historical moment. Michel Foucault, a doyen of post-structuralism, calls this moment the invention of the disciplines. The disciplines are the multitude of constraints which not only give lives meaning, but also shape and administer individual bodies. They are very like the law, enrolled by it, but still differ-

entiated from it: "In appearance, [they] constitute nothing more than an infra-law. They seem to extend the general forms defined by law to the infinitesimal level of individual lives. They seem to constitute the same type of law on a different scale, thereby making it more meticulous and more indulgent."<sup>1</sup> This differentiation enables Foucault to trace the emergence of a law-like power and to historicize the apparent ubiquity of the law. Unfortunately for Davies, her homogenization of constraints (although useful in the pedagogical project she has set for herself) leaves her with an undifferentiated and trans-historical concept of law.

<sup>1</sup> Foucault, Michel. 1989 *Discipline and Punish: the Birth of the Prison*. Trans. Alan Sheridan. New York: Penguin, p.222.