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The Sassenach, The Scot, and The Law

A majority of what we have covered so far in Judith Butler's *Gender Trouble*¹ consists of her using, analyzing, and sometimes rejecting the theories and models of academics that have written before her on the topics of feminism, sociology, biology, and philosophy. Because she is carefully crafting an argument for a new perspective, using a foundation of works respected by—and therefore validated by—the juridical Law of modern Western academia, it is a somewhat difficult task to piece together only what her commentary is, as opposed to her recounting what others have done. I am not a philosopher either by nature or by training, and so what my individualized mode of engagement picked out of the beginnings of *Gender Trouble* is what I could relate directly to my call to ministry: we are all made in a system of our predecessors' making and our own perpetuation, and saying what it is *not* does nothing except reinforce what it *is*. It also does not help to try to find one perfect truth to define any single aspect of this system, because there will always be someone/something who fails fit into that particular truth, either by their own definition or by how they are defined by another. There is no way to freedom. And yet, that in itself is a universal statement, and therefore, according to Butler, must have an exception.

¹ Judith Butler, *Gender Trouble* (New York: Routledge Classics, 2007)

The key is Butler's rejection of "coalitional 'unity' as a goal" that "assumes solidarity, whatever its price, is a pre-requisite for political action."² Instead, "a coalition needs to acknowledge its contradictions and take action with those contradictions intact."³ So, instead of taking *the* juridical structure of the Law and attempting to look at it as a single entity that applies universally to all its subjects, thereby only reinforcing its self-fulfilling existence, it is necessary to see a multiplicity of Laws, overlapping and coexisting and often contradicting. To be able to examine, rethink, and possibly tear down one Law, we must not make the futile attempt to find an authentic place outside it, but rather instead to take a step sideways—into *another Law that is foreign to our own*. Butler states her intent with the book is:

to think through the possibility of subverting and displacing those naturalized and reified notions of gender that support masculine hegemony and heterosexist power, to make gender trouble, not through the strategies that figure a utopian beyond, but through the mobilization, subversive confusion, and proliferation of precisely those constitutive categories that seek to keep gender in its place by posturing as the foundational illusions of identity.⁴

Parker Palmer, as quoted by bell hooks in her book *Teaching Community*, identifies such displacement as a path to discerning aspects of reality that in our own juridical structures, our Law-formed comfort zone, if you will, that would otherwise remain invisible to us:

In *The Active Life* Palmer writes about the empowerment that can emerge when we shift a set position, when we dislocate, explaining: "If disillusionment is one of life's natural forms of contemplation, the experience of dislocation is another. This happens when we are forced by circumstance to occupy a very different standpoint from our normal one, and our angle of vision suddenly changes to reveal a strange and threatening landscape... the value of dislocation, like the value of disillusionment, is in the way that it moves us

² Butler 20.

³ *Ibid.*

⁴ Butler 46.

beyond illusion, so we can see reality in the round--since what we are able to see depends entirely on where we stand.”⁵

One of most important revelations to come out of such a displacement, or a sideways step from one Law into another, is the ability to discern that oppression, or juridical constraint, is happening in the first place⁶, as opposed to just knowledge of how to ease one’s oppression or exclusion, or that of others. Again, the mistake lies in searching for a way to separate identity, gendered, or sexed, or otherwise, from Law, because these things are “impossible to separate out [...] from the political and cultural intersections in which [they are] invariably produced and maintained.”⁷ We can only see more clearly, that “reality in the round,” by moving from one context to another, as taking identity development out of any context at all also removes any significance it has.

In Unitarian Universalism, we have no limitations on what might be used in the service of ministry or in the art of worship; our “six sources of faith” includes such things as “direct experience” and “the words and deeds of prophetic men and women” in addition to the more traditional Christian and Hebrew scriptures. Toward that end, I often turn to film, television, books, music, and comics of popular culture in order to discover new cultural touchstones around which communities form, gather, and manifest new juridical identities based in these new mythologies. *Gender Trouble* was first published in 1990; one year later, in 1991⁸, Diana

⁵ bell hooks, *Teaching Community: A Pedagogy of Hope* (New York: Routledge, 2003), 21.

⁶ “In effect, the law produces and then conceals the notion of ‘a subject before the law’ in order to invoke that discursive formation as a naturalized foundational premise that subsequently legitimates that law’s own regulatory hegemony.” (Butler 3)

⁷ Butler 4-5.

⁸ “We see here the first stage of the introduction of great ideas. They start as speculative suggestions in the minds of a small, gifted group.” (A.N. Whitehead, *Adventures of Ideas* 15)

Gabalton published *Outlander*⁹, a novel that has sold millions of copies worldwide, spawned multiple full-length sequels, spin-offs, and novellas, and been adapted into a television series. Through the use of fictional devices such as romance, time travel, and exaggerated political intrigue, it tells a story of how one person, stepping from one Law into another, finds a way to self-define her body and her gender outside of the context in which she was made, and to fully reintegrate her mind and body into a holistic being who troubles the waters of gender fluidity without sacrificing her Self in the process, nor being forced into a single definition of what gender is in either her originating Law or the one to which she travels. Its popularity, and accessibility, means it can be used as an effective teaching tool to demonstrate the process of examining the Law through the medium of storytelling, which is one of the human creations that has withstood thousands of years of changing, shifting Law cultures and environments.

To understand the analysis, one must be familiar with the basic plot of the novel, which begins in 1945. Claire Beauchamp Randall is a housewife and former Royal Army nurse, married to Frank Randall, an Oxford historian and former intelligence officer. They married just before the start of WWII, and have spent most of their relationship separated due to military assignments. While on vacation in the Scottish Highlands, Claire touches a circle of “sacred” standing stones and is transported back in time to 1743, two years before the Jacobite rising begins. Over the course of 600+ pages, she becomes embroiled in both inter-clan and English-Scottish politics, and ends up forced to marry a Highlander named Jamie Fraser to save herself from harm. It is her time travel from 1945 to 1743 that allows her to see (1) the cracks in her first marriage; (2) her juridical oppression as a woman in her own time, of which she was previously

⁹ Diana Gabaldon, *Outlander* (New York: Bantam Dell, 1991) Kindle edition.

unaware, but also to unite her mind and body into a single, responsive being, and to be willing to take on juridical *male* and *female* markers in both eras without feeling forced to deny her own knowledge of being a woman. When others attempt to erase her, she resists, precisely because she has been empowered by her displacement.

The novel is written in first person, so Gabaldon uses the character's voice to establish the Law of 1945 while indicating at the same time the ways in which Claire both meets and doesn't meet the juridical definition of a woman, intersecting with her class and social location. She repeatedly described by others as beautiful, and is never doubted as a woman when considered solely by her physical attractiveness as a female subject. She is an orphan, reared in a life of unladylike travel, adventure, and scholarship by her Uncle Lamb from the age of five until eighteen, when she met Frank Randall during his visit with her uncle for an academic consultation, and she left with him.¹⁰ Gabaldon chooses to tell us about this life commitment with no more detail than the single sentence about Frank and Uncle Lamb's meeting, and therefore establishes Claire's first marriage as an example of Lévi-Strauss's sociological model of women exchanged as gifts between men, with the woman taking on the role of bride to function "as a relational term between groups of men, she does not *have* an identity, and neither does she exchange one identity for another. She *reflects* masculine identity precisely through being the site of its absence."¹¹ Claire is passed between the two men like the historical facts they exchanged, with no thought to her identity as developed to date, and how that may or may not be compatible with the juridical role of a professor's wife.

¹⁰ Gabaldon 4.

¹¹ Butler 52.

Subsequent narration by Claire gives us hints at how her willingness to be a subject to the Law without interrogation is erasing her identity within the context of the marriage. Frank is affectionate and supportive of the more private elements of her personality that are due to her unusual formation outside of traditional society, particularly her sex drive and execution of her physical desires¹², but anything she demonstrates that strays outside of juridical expectations is met with derision or condescension. At a tea service, she not only drops the teapot, but swears when she burns her hand, and he glares at her as opposed to showing concern.¹³ At odds with her time now after having spent so many years as a front line nurse during WWII, Frank suggests she take up botany, but then mocks her methods when she goes beyond mere reading into scientific collection of plants.¹⁴ When he spends countless hours on their second honeymoon in conference with other historians looking into his own family tree, she gets tense, twitchy, and bored.¹⁵ Even the established beauty of her appearance is marked by her self-awareness that her hair consists of “waywardness of [her] light brown curls”¹⁶ and that the “defects in [her] undisciplined appearance”¹⁷ make her less *something* in this time and place.

Once she touches the standing stones, Claire is sent through time to 1743, where “the Law reasserts and individuates itself within the terms of every infantile entrance into culture.”¹⁸ Through the stones, and the journey from there to Castle Leoch, she is “birthed” into this time

¹² Gabaldon 33.

¹³ Gabaldon 10.

¹⁴ Gabaldon 5.

¹⁵ Gabaldon 21.

¹⁶ Gabaldon 1

¹⁷ Gabaldon 1.

¹⁸ Butler 58.

and place, with its own Law, and yet, she comes into with much of her identity already forms within the structure of 1945 Law. So while the 1743 Law is, inevitably, working on her from the time of her arrival, it does not have the tabula rasa to fully take hold. At the same time, the changes it makes to her also work to separate her from the 1945 Law from whence she came.

In 1743, however, her “undisciplined appearance” from 1945 is much more noticeable; she is assessed by both Jack Randall¹⁹, Frank’s ancestor, and the Scottish clansmen she meets next²⁰, based on her dress (or lack thereof), perfume, clothes, speech, and most significantly, absence of a male escort. Through interaction between Claire’s 1st person narrative and the people of 1743, the novel asks us to consider if Claire is a lady, a whore, a witch, or a fairy? None of these things are whole people, with full identities, in this time and place. The other women she encounters agree with this list, and make their choice, much as Claire did in her own time, but now having been exposed to both, Claire refuses to be limited by the juridical roles of women in either time’s self-fulfilling structure of Law. It is in this refusal to participate in the perpetuation of the Laws, while still existing within the structure of the Laws, that she begins to reclaim the aspects of her identity she had subsumed as not-woman into her survival as a person going forward: her medical abilities, her swearing, her ability to hold liquor, her adventurous upbringing, and her first hand experience with death and battle in WWII. These things negate her female identity in the 18th century, but enhance her *presence* as a person, as a body, as a force. She allowed her *self* to be silenced in her own time, and now refuses to be silenced in the past.²¹

¹⁹ Gabaldon 39.

²⁰ Gabaldon 41.

²¹ Gabaldon 55.

She is called Sassenach, outsider²², used most often as an epithet, and because they cannot quantify her on the list of juridical roles for women, she is treated with suspicion.

Upon arriving at Castle Leoch, still in her 20th century clothes and with nothing else to link her to her surroundings, she is described in the text as an “apparition”²³—a word choice that implies not only separation from the body, and the biological identity that follows having a body, but also being not of this 18th century world. They have discounted her from being a whore, but her bodily presence still does not meet any of the other juridical criteria in this time and place, and so she is a disembodied ghost. Butler describes it thusly:

Precisely because certain kinds of “gender identities” fail to conform to those norms of cultural intelligibility, they appear only as developmental failures or logical impossibilities from within that domain. Their persistence and proliferation, however, provide critical opportunities to expose the limits and regulatory aims of that domain of intelligibility and, hence, to open up within the very terms of that matrix of intelligibility rival and subversive matrices of gender disorder.²⁴

It is from this context and location that she learns to see Palmer’s “reality in the round” of both her 1945 Law and the Law of 1743, and begins the process of becoming a woman who defines herself using both, and is therefore constricted by neither, including freely taking on identity markers and experiences that are both male and female, without queering her own perception of womanhood.

The most significant of these markers is violence, and how it is done. Not only is there a Law of 1945, and a Law of 1743, but there is also the fictional Law constructed by Gabaldon. In *Outlander*, throughout the entire book, the pattern is established that when it comes to violence,

²² Gabaldon 3.

²³ Gabaldon 58.

²⁴ Butler 24.

women are raped, and men are beaten. Even in a scene where a young girl, Laoghaire, is to be beaten for disobedience, a man (Claire's soon-to-be-second husband, Jamie), intervenes to take her punishment in her place.²⁵ Rape of women, even ladies residing in the supposedly safe halls of Castle Leoch, is so commonplace that the seneschal of the castle sends all the women to bed during one event in which the men have been drinking heavily and apparently cannot stop themselves.²⁶ The establishment of this pattern is important to making gender trouble because Claire herself, while *threatened* with rape numerous times, is never actually subjected to it, and is instead beaten as a male is when his transgression threaten the safety and security of those in his community.²⁷ During an encounter in which she is fighting a wolf with her bare hands, Claire narrates that "There comes a turning point in intense physical struggle where one abandons oneself to a profligate usage of strength and bodily resource, ignoring the costs until the struggle is over. Women find this point in childbirth; men in battle."²⁸ Claire believes herself to be barren, never able to experience childbirth, and here she freely claims an experience she identifies as one belonging to men. Likewise, just as Jamie takes beatings but never has any lasting effects from them in the fictional narrative, it is he who is actually raped and experiences the violence the fictional Law tells us is reserved for females.²⁹ Gabaldon's separation of forms of violence along gendered lines, then subverting that for the two main characters, is an example of what Butler describes as "An open coalition" that "will affirm identities that are alternately instituted and

²⁵ Gabaldon 81.

²⁶ Gabaldon 137.

²⁷ Gabaldon 284.

²⁸ Gabaldon 537.

²⁹ Gabaldon 555.

relinquished according to the purposes at hand.”³⁰ And, in fact, it is the marriage between Claire and Jamie, and how it develops, that is the current of “open coalition” throughout the novel.

At first, their arranged marriage appears to be another kinship exchange of a woman between men: Jack Randall wants to question her as a Englishwoman, and Dougal MacKenzie wishes to keep her out of English hands because of what she knows about their support of the Jacobites. In order to subvert English law, she has to become a Scotswoman by marrying Jamie Fraser, a Scotsman. And yet, it is within this juridical marriage of circumstance that Claire claims the freedom from the restrictions Frank had put on her in her 1945 marriage, and uses what she did like about that marriage to forge the boundaries and expectations of the marriage in 1743. She finds herself responding to Jamie as her husband as a whole being, integrated emotionally, physically, and mentally, and so when given the choice to return to Frank and the gender-restricted Law of 1945, or stay with Jamie in the gender-fluid shared Law-structure the two of them have created together in 1743, she chooses the latter.³¹ So while Butler asks “To what extent does the category of women achieve stability and coherence only in the context of the heterosexual matrix,”³² the fictional narrative presented by Diana Gabaldon in *Outlander* offers speculation as to what is possible when two constricting matrices collide and begin to stabilize each other in the aftermath of such a collision.

³⁰ Butler 22.

³¹ Gabaldon 412.

³² Butler 7-8.

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