

KULTURKAMPF

The Global Matrix and the Predicament of 'Postmodernisms': An Introduction to the Critique of Kulturkampf

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Let's go ahead, set up our dichotomies and choose our colors. Now read the text: what matters is what the options already prescribe, the meaning of being before or after the “/,” the possible and potential “truths” a particular position enables and/or precludes? Explicitly or implicitly, the authors in this cluster address this question when each shows how the recent articulation of the term Kulturkampf rehearses the pair public/private, the founding liberal distinction. When doing so, they delimit the challenge facing progressive legal scholarship in a global (juridical, economic, and ethical) configuration ruled by the conservative versions of the liberal principles of diversity and multiculturalism. After each account of neoconservative reactions to the social (racial, gendered/sexual, economic) subaltern's demands for (juridical and political) representation, as I hope the reader will notice, it becomes evident that any progressive rebuttal of the tale of “cultural wars” should begin with the acknowledgement that the prevailing formulation of the domain of the private deploys racial and cultural difference as markers of those who fail to embrace the principle of universality. When doing so they ask the reader to be aware of easy dichotomies that recall the liberal ontology in which the principle of universality and its signifiers produce the political scene as an abstract, transcendent, configuration in which (racial, gender/sexual and cultural) difference enters as a troubling rather than a constitutive aspect of social life.

Through three moves these papers indicate the need for a (re)formulation of the social which would not be immediately resolved in the neoliberal-neoconservative reframing of the

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public/private dichotomy. First, to advance a conception of justice (social justice), which seemingly contradicts law's universality principle, each addresses a signifier—race, religion, gender, and sexuality—that refers to what I will call later the Global Matrix. By doing so, they indicate how the writers of the tale “cultural wars” deploy the principle of universality in an ethico-political battleground in which these categories emerge as moral signifiers. Second, they refuse neoconservative reconfigurations of cultural (identity) politics that rewrite universality in a transparent domain of the public and projects/demands for social justice onto a blurred domain of the private. Third, none err by taking sides. Each cautions us that the sides only come into being together—that the neoconservative version of cultural difference already assumes that juridical universality organizes the public domain. Put differently, when read as a unit, these papers show that a viable critique of the tale of the “cultural wars” should include the recognition that the terms—the positions the hegemonic principles of diversity and multiculturalism write—demarcate a political stance which ignores that the global now constitutes the site of a productive struggle and a scene of ethical embattlement created by the neoconservative reading of the postmodern landscape. Not surprisingly, each author makes these moves separately. After all they engage a tradition—liberal thought—which like all traditions never ceases to re-invent itself.

While naming this tradition will not resolve the predicament it poses at the core of any critical legal project—but more particularity to Critical Race Theory (CRT)—it does help us to understand why progressive legal scholarship should engage neoconservative articulations of the private in defenses of juridical universality. Undoubtedly, the critical position these papers delineate, the one to which LatCrit has been consistently moving towards, emerges in a terrain which has been mapped by articulations of the principle of universality, the one which distinguishes liberal (onto-epistemological) accounts. This terrain has been demarcated by a notion of juridical universality—the founding thread that goes back to Locke's formulation of the idea of the rule of law itself. Through the distinction between public and private, this troubling, yet productive inheritance has manufactured the social subject presupposed in what Michel Foucault terms the juridico-political conception of power.¹ While immersed in ordered actual relationships of exchange, as Peter Fitzpatrick reminds us, this social (legal and political) subject has been always a global figure. For the

¹ MICHEL FOUCAULT, *SOCIETY MUST BE DEFENDED*, 2004.

“individual,” the “self-regulated subjectivity,” the autonomous figure classic liberal theorizing describes emerging in Europe, “is a condition for the existence of modern, liberal legality”, who shares in law’s unique nature which is that it “is no longer tied to any extraneous order, now deriving its force and origin purely from its intrinsic being.”²

For this reason, when interrupting the public/private dichotomy with the question of the law’s (in)ability to ensure social justice, the papers in this cluster necessarily displace juridical universality—that of the law and of the social subject it institutes—when they recall the limits of the social ontology that renders the possibility of collective existence contingent upon the conception of the law as an autonomous, exterior, controlling, force.

Nevertheless, the conception of (social) justice critical legal theorizing (and other postmodern projects) advocates relies upon the rendering of the principle of universality that produced the subaltern subjects against which neoconservatives now unleash their “moral wars,” the one which renders it possible to address the limits of juridical universality. Here, I refer to the post-Enlightenment projects of knowledge of society—anthropology, sociology, psychoanalysis, etc.—which attempt to reconcile the abstract essence which is actualized in the market, the state and legal apparatus, and the actual differences that characterize modern collective existence, ones which produce the modern (social) subject as a spatial/temporal, a global-historical thing. That is, each shows how in the tale of the “cultural wars,” the place of the proper social (legal and moral) subject only encompasses a particular kind of human beings, but ones whose (cultural) particularity only makes sense when contrasted with other past and contemporary modes of being human.³

Because I cannot discuss the details of this second articulation of universality, namely scientific universality, in the limited space of this introduction, I move to show how, when exploring how a given social scientific signifier—race, class, culture, gender/sexuality—is reformulated in the neoliberal/neoconservative tale of “cultural wars,” this cluster invites us to consider these categories as signifier of the Global Matrix. In this invitation, I find the suggestion that we have reached the limits of the 1980s politics of difference (or identity politics or cultural politics), and that it has been absorbed into the

² PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW*, 55, 135 (1992).

³ For a critique of these projects of knowledge see Denise Ferreira da Silva, *Homo Modernus*, forthcoming.

'original' social model, which critical legal theorizing rejects, and which is now re-articulated in the tale of "cultural wars." Consistently, this social ontology does not immediately allow for a mapping of the Global Matrix—the ethical-juridical configuration which encompasses the kind of human differentiation upon which critical legal theorizing grounds its challenges to legal formalism and upon which the writers of the tale of "cultural wars" rest their return to their claim that the "individual," or the "original" social (legal/moral) thing is the sole subject of the private entitled to claim juridical universality. Rejecting the privileged position, the public domain which remains a monopoly of the "original" liberal subject—European, white, male, property owner—each paper invites us to revisit the axioms of liberalism informing the neoconservative rendering of the Global Matrix.

What this cluster suggests is the need for another model, a global-historical model, which assumes that the kind of difference communicated by the categories of race, class, culture (religion, language, etc.), and gender/sexuality, is not an individual (or collective) substantive attribute. Instead, it indicates that these consist in productive political strategies and are effects of social scientific representations, which now govern the global (juridico, economic, ethical) configuration. My point is that, when arguing for the need to reconcile juridical universality and the recognition of social differentiation, in a formulation of justice which addresses the effects of juridical domination and economic exploitation, these papers indicate that demands for social justice cannot presume (as in the case of the Civil Rights movement) the nation-state as the sole ethico-political paradigm. On the one hand, they indicate that to undermine the productive effects of the signifiers of the Global Matrix, and to redress the subjections they entail and justify, we need an ethical principle which privileges representation both (a) in the recognition that existing legal structures re-present a particular set of principles of the "original" (autonomous) legal subject, (b) in the production of a critical scholarship that re-presents, re-tells and re-signifies the global-historical trajectory of subaltern social subjects, and (c) that in order to understand this trajectory as an effect of the social scientific signifiers which now organize our 'postmodern' social (juridical, economic, and moral) configurations.

Each paper articulates a critique of the tale of *Kulturkampf* to address (at least) one crucial question that should be raised by any critical reading of, and political response to, the tale of the "cultural wars." (1) How do we reframe the subaltern legal perspective in such a way to preempt the most destructive strategies deployed in the

scene of theoretical embattlement? (2) How do we retain social difference as the basis for demands for justice (juridical and political representation) without re-producing subaltern subjects as homogeneous and fixed cultural entities, i.e. as they have been constructed in social scientific scholarship? (3) How do we reconcile the various social scientific signifiers—class, gender/sexuality, race, culture—in a critical project which does not repeat the pitfalls of universality, i.e. the move that erases how western (colonial and global) juridical, economic, and symbolic apparatuses produce subaltern subjects in the various global regions? Finally, (4) how do we engage in the struggle for subaltern representation while aware that it will reinforce neoconservative agendas which recognize difference but only to write a moral tale which renders its demands for justice un-reconcilable with juridical universality? From a position in between Derrick Bell's racial realism and Kimberlé Crenshaw's strategic liberalism,⁴ they suggest that progressive legal theorizing needs to map the Global Matrix—to identify its constitutive pairs and to excavate and dissipate the "truth" they produce. As they trace the effects of neoconservative appropriations of politics of representation, each paper describes the obstacles and suggests strategies for overcoming the founding public/private dichotomy which informing legal scholarship and in the global ethico-political grammar.

I. THE RACE CRITIQUE: ITS OFFSPRING AND DISCONTENTS

In "*Kulturkampf or 'fits of spite'?: Taking the Academic Cultural Wars Seriously*," Sylvia Lazos-Vargas addresses the question of what should be the normative basis of the now fractured legal scholarship. Instead of calling for an armistice, she welcomes the battle. She reminds us that the contention is productive only if a common ground for disagreement is identified, if destructive strategies are avoided. That is, for Lazos-Vargas the academic "cultural wars" are both necessary and productive in the present situation of American legal scholarship. The problem, however, is that each of the contending parts she names—neo-traditionalists, radicals, assimilationists and latcriters—inhabits a moral position which, in its turn, defines what is to be valued and that which is to be obliterated. For this reason, instead of engaging each perspective as a position in the larger moral field which could be called legal scholarship, the

⁴ Here I have in mind, Derrick Bell's famous statement that black will never enjoy equality in the United States and Kimberlé Crenshaw's defense of the right strategy in Kimberlé Crenshaw et al, *Critical Race, Theory*, The New Press, 1995.

contenders choose to attack individuals and not their perspective—a consistent liberal war tactic, to be sure.

When describing how this particular deployment of morality, which addresses individuals and not their ideas, enters the academic arena, she shows how the founding division public/private division plays out in two fronts. In the neo-traditionalists- Critical Race Theory (CRT) front, it tellingly actualizes the fundamental division – rational/irrational – communicated by the signifier race, which here takes the form of a distinction between objective/subjective, change/permanence, or truth/prejudice, etc. On the one hand, neo-traditionalists’ statements redeploy the rational/irrational pair when accusing race critics of lack of intellectual rigor and emotionalism to delineate the proper (moral) boundaries where proper legal scholarship is produced. That is, she shows how here the race signifier is not immediately, explicitly articulated but that it organizes a distinction between “the professional” and its “others” when neo-traditionalists accuse race critics of being badly trained legal scholars. On the other hand, forced to play according to the rules the “professional/non-professional” (rational/irrational) pair institute, race critics cannot but charge that their foes deploy racial stereotypes, that their reading of critical race scholarship lacks “objectivity,” that it is resistant to change, based upon prejudice, etc. In this scene of embattlement, both sides deploy race as a moral signifier, which delimits the position that remains faithful to the signifiers of (academic) universality—namely, objectivity, change, truth, etc.

When contention takes place among racial subaltern legal scholars, the battle becomes overly personalized while at the same time the ethico-political stakes become more explicit. At stake here, Lazos-Vargas argues, is a “minority perspective” as a point of departure for theoretical critique. Among scholars of color, arguments regarding the appropriateness of a “minority” theoretical-methodological perspective indicate a divide in terms of whether the assimilationist (civil rights perspective), a radical, or a more complex (LatCrit) critical position should prevail. While the line separating the assimilationists from the others is easy to spot, the one separating the radical and the complex one is not. According to Lazos-Vargas, the divide here has to do with the reliance upon historical-materialism and its promises of a critical corner outside hegemonic liberalism. If one recalls that historical materialism’s greatest promise was nothing but the realization (by universalizing it) of liberalism’s premise and promise that everyone is born and exists free and equal, then the predicament which, according to radical “old-

timers," haunt lat-criters is nothing more than the promise of liberation we all share. When Lazos-Vargas advocates a "healthy dialogue," however, she suggests that this embattlement can be productive. Though she does not offer a path, her account of "academic Kulturkampf" suggests at least a guiding question: Either progressive legal (radicals and complex) scholars engage in a battle of ideas which will indicate an alternative to the premises and promises of liberalism or they will remain prisoners of the constitutive liberal dichotomy the rational/irrational—the one deployed in the neoconservative tales of Kulturkampf—which distinguishes between an intrinsically violent "state of nature" and an abstract composite, the body politic.

II. POST-MOMS

Why and how the neo-conservative rewriting of the public/private dichotomy has been so successful is a question at the core of Martha T. McCluskey's "*The Politics of Class in the 'Nanny Wars': Where is Neoliberalism in the Kulturkampf?*" In this piece, Professor McCluskey shows how it results from an artful deployment of public/private dichotomy in an ethico-political account which reconfigures another dear liberal pair, namely culture/economics, in which liberalism's highest value, freedom, is constructed as a monopoly of the (righteous) individual. Anyone familiar with the trajectory of modern philosophy would not cringe at this unexpected marriage of economy and morality in which the family becomes the site of a moral battle where the contending parts are differentiated according to how they view and behave towards marriage and childbearing/rearing. For one thing, Locke's proper political subjects—individuals able to conceive and 'sign-on' to the social contract—are European (white) males, property-owners, and heads of households. The liberal social (juridico/economic) subject has always sided with the family—if for anything because the family was also his property, though he was not willing to trade it in the market.

What Professor McCluskey's piece highlights however is not this recent re-enactment of the liberal play. She is concerned with the fact that progressive intellectuals enter the moral battle from a defensive position. Instead of challenging this founding public/private dichotomy, they choose the public, namely the economic, and accept the neoliberals and neoconservatives' resolution of the signifiers of the Global Matrix—race, gender, class, sexuality, and religion. That is, against progressive agendas that dismiss this separation by establishing that private has always been

public—the victory of 1960s Civil Rights, nationalist, feminist, and youth movements—neo-conservatives embrace their claim but rewrite it within the liberal logic which conceives of the private as individual, as a matter of (subjective) values and preferences. When doing so, they turn the 1980s (cultural, identity) politics of representation on its head by advancing a politics of individual self-representation. With this, neo-conservatives reinstitute the classical social (legal/political) subject in a moral tale that rewrites the Global Matrix when they attribute a ‘failure’ to actualize proper moral (family) values to (racial, gendered-sexual) subalterns’ cultural difference. For this reason, her analysis of Flanagan’s piece published in *The Atlantic Monthly* provides not so much an indictment of the feminist project itself, which has consistently (at least the second wave) focused upon patriarchy, but a version which seeks to keep the feminist (economic) bathwater and the baby too! The inability to recognize the political/economic determinants of their “freedom” results not from the fact that feminism does not acknowledge class and race as producers/signifiers of female social (juridico and economic) trajectories. As we well know, there have been many versions of the feminist project—in the U.S. women of color and third world feminists did not take long to call the attention to their middle-class, white, feminist comrades of their own universalizing tendencies. What Professor McCluskey notes is how the neoconservative rewriting of the “original” liberal figure, the individual, finds its way into feminist discourse. That is, she indicates how feminist discourse resurrects the social subject postmodern critical (feminist, racial, queer, etc.) interventions proclaimed no longer existent when it privileges the Global Matrix as grounds for ethico-epistemological-political engagement. Whether the nanny is an undocumented immigrant from Venezuela, a refugee from Guatemala, or Puerto Rican, in the Global Matrix she belongs in a slot that always precludes her from occupying the position of the “individual.” Hence, no matter how conscious the females she liberates become of the political/economic inequities neo-liberalism re-produces, as long as her employers do so from their position as U.S. white (or otherwise), middle-class females always already individuals, she will always inhabit the mark assigned to social (racial, gendered/sexual, economic) subalterns. The nagging question, of course, is whether and how progressive legal scholarship can advance a mapping of the public sphere which comprehends the global (racial/cultural) subalterns, the ones whose subjection has for the last hundred years or so delimited the position of the proper social subject, the one the notion of juridical universality both presupposes

and institutes. When asking this question I am not intimating that progressive legal scholarship is doomed because it shares in the predicament haunting any ethico-political project circumscribed (enabled/precluded) by the liberal social ontology. As the Brazilian saying goes, the hole is farther down.

Following the path already determined by the context they choose to intervene, each engage the dichotomy itself as the matter at stake, and all hold on to the “/” for without it critique itself would have no sense. For moving towards (re)formulations of the above questions, the papers in this cluster choose to inhabit the “/.” As each displaces this dichotomy, they respond to the challenges the cultural presents to the legal, which is represented as the latest rehearsal as a public versus private war. The public before the private? What is the crit legal scholar to do before this choice? What are the options? Both? And? Either/Or? As each displaces the term *Kulturkampf* to uncover at the core of the liberal project productive fissures that, instead of rendering it irrelevant, make the critic’s task all the more crucial when the hegemonic ethico-political grammar discourse seeks to erase the dichotomy, not by collapsing the terms or by eliminating difference as the assimilationist strategy predicated, but by highlighting difference and describing the positions each social scientific signifier institutes. Such strategy, as the rhetoric and practices the “faithful freedom-lovers” now deploy against the rest of the planet indicate, renders quite easy the (moral) justification of projects which seek not only to (legally/politically) exclude but to incarcerate or eliminate those global subalterns, the cultural warriors, the neoconservative tale places on the non-valued side of the “/.”