

FOREWORD

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When feminist critic and theorist Toril Moi undertook a grappling with the deceptively simple sentence “*What is a woman?*” in her eponymous 1999 work,¹ the question carried the pitch of a riddle. With Simone de Beauvoir’s *The Second Sex*² for its touchstone, Moi’s title essay posited “a theory of the sexually different body”³ that invoked de Beauvoir specifically in order to identify where, by a too-narrow apprehension of a wide-reaching de Beauvoir, contemporary feminist thought lost its way. Taking too much for granted what it has presumed to know for at least a generation about the difference between sex and gender, contemporary feminist theory, according to Moi, today mistakes its “reformist” conclusions for “revolutionary” ones inasmuch it continues to retain “as starting points for [its] theories of subjectivity, identity, and bodily sexual difference”⁴ the self-same sex/gender distinction it’s been intently dedicated to deconstructing. That is, while poststructuralist feminists have been careful to insist upon the social constructedness of gender, and have decried the impulse of the previous generation to essentialize sex by reflexively (and misleadingly) opposing gender to sex (sex being merely “the . . . surface on which the script of gender is written”⁵), these theorists nevertheless require fundamentally what they reject. Perhaps then, Moi suggests, much less is known about “what it means to be a woman (or a man) in a given society”⁶ than we imagine, the impressive evolution of feminist thought since the 1960s notwithstanding. In Moi, academic feminism is urged therefore to return to its first works: “Lacan returned to Freud; it is time for feminists to return to Beauvoir”⁷ for “exactly the kind of non-essentialist, concrete, historical and social understanding of the body that so many contemporary feminists,” bedeviled by their structuralist disavowals, “are looking for.”⁸ But returning again to feminism’s first works may not be entirely possible, it turns out. Reading Ian Halley’s provocative essay *Queer Theory By Men*,⁹ one has the sense that in the pursuit of an improved epistemology of sex, gender and the body, feminism is its own worst antagonist.

1. TORIL MOI, *What Is a Woman? Sex, Gender, and the Body in Feminist Theory*, in *WHAT IS A WOMAN AND OTHER ESSAYS* 3 (1999).

2. SIMONE DE BEAUVOIR, *THE SECOND SEX* (1953).

3. MOI, *supra* note 1, at 4.

4. *Id.*

5. *Id.*

6. *Id.* at 4-5.

7. *Id.* at 5.

8. *Id.*

9. Ian Halley, *Queer Theory by Men*, 11 *DUKE J. GENDER L & POL’Y* 7 (2004).

In the fall of 2002, Harvard University Law Professor Janet Halley delivered the annual Brainerd Currie Memorial Lecture at the Duke University School of Law. That lecture, *A Map of Feminist and Queer Theories of Sexuality and Sexual Regulation*,¹⁰ formed the basis of what was to become, under the signature of Ian Halley, *Queer Theory by Men*, the feature essay in this issue of the *Duke Journal of Gender Law and Policy*. If there is a singular idea distinguishing Halley's *Queer Theory By Men* from other avowedly left reflections on today's legal gender troubles, it is surely his appeal to an epistemologically inflected politics of divergence between feminism and other pro-sex projects like pornography studies, sex liberationism, and queer theory. Halley proposes, in short, that gender and queer theorists "Take a Break from Feminism."¹¹ For on the *legal* question of what a woman is, to reframe Moi, or, on the problem of power in erotic contexts, *any* determinedly feminist effort to explain such quandries is bound to short-circuit and frustrate its own feminist aims. The trouble with feminism, he avers, is its resignation—its reductiveness, one might say—to a categorical binarity it cannot, in spite of itself, seem to get around or through, despite its accepted hybridities of history, race, class, and method. Although "different feminisms", he points out, distinguish women and men "differently" ("[S]ome see men and women, some see male and female, some see masculine and feminine"¹²), under them all, Halley argues, "men" and "women" are "almost always" conceived as two discrete, if still yet distinct, human groups nonetheless.¹³ Further, nothing that can be called feminist can avoid turning "in some central or core way on [that finally reductive] distinction between M[ale] and F[emale]."¹⁴ The binary reflex stuck intractably in the craw of academic feminism (set in sharp relief by Moi), then, recommends another course, we are told, for more productively theorizing those problematics of sexuality and power that feminism has presumptuously, Halley implies, taken for its own proper study.

In *Queer Theory by Men*, Halley proposes an analytical departure away from properly feminist musings on sex, gender and power toward a more productively queer theoretical landscape, one more easily impervious to the abjecting subordination hypothesis (advanced famously by Catharine MacKinnon) that has, on Halley's view, quietly underwritten feminism for so long. To the degree that there is a "sexuality side" to what a woman is, in other words, what she is is not therefore, feminism's project exclusively. The question of what a woman is, he means to say, is (or ought to be) also available to "other left/liberal/progressive projects that [not only] take sexuality and power as their domain of operation . . . [but also] lack a primary focus on M/F [oppositionality] and often do not primarily concern themselves with [the political presumption that] M>F."¹⁵ Among these parallel projects, Halley marks out queer theory as the privileged site of an urgent deconstruction of sex that regards bodies, sex acts, erotic desires, sexual identity and love as wholly disjunctive ideas,

10. Janet Halley, *A Map of Feminist and Queer Theories of Sexuality and Sexual Regulation*, Brainerd Currie Memorial Lecture Series (Nov. 7, 2002).

11. Halley, *supra* note 9, at 7.

12. *Id.* at 8.

13. *Id.*

14. *Id.*

15. *Id.* at 9.

too incongruous in fact to uphold a male/female opposition in theory. It is precisely because queer theory doesn't require feminism's devotion to the identity category "woman" (or its historical associations) for a progressive liberationist theory of sexuality that Halley forcefully urges us toward the expediency of queer theory written by men. Leo Bersani's rebellious essay *Is the Rectum a Grave?*¹⁶ and Duncan Kennedy's irreverent *Sexual Abuse, Sexy Dressing and the Eroticization of Domination*¹⁷ are Halley's touchstones of choice in this dilative call for a theory of sex without feminism, "one adequate to the neorealist and post-modernizing views of the complexity with which legal rules and social actors interact."¹⁸ As every call merits a response, it is no surprise that *Queer Theory by Men* found ready commentators in three Duke professors who share with Halley some background in critical theory, queer theory, or poststructural feminism.

Where Halley invoked the legal complexities of *Twyman v. Twyman*,¹⁹ a 1993 Texas divorce case involving sadomasochistic sex, connubial duty, a premarital rape disclosure and emotional abuse in order to expose the axiological limits of feminist legal theory in deciding such cases, Jane M. Gaines's response piece, *Sexual Semiosis* would seem to at once flatter and eulogize Halley's by offering up "new unanticipated agents involved in the production of desire" that "an earlier feminism might not have imagined"²⁰: namely, pills that offer a short-lived remedy for erectile dysfunction. Like the legal complicatedness of consent, pain, pleasure, and intentionality in *Twyman*, the unimaginable involvedness of the law surrounding domestic abuse and rape amidst the ever-widening commercial availability of Viagra pills and their knock-offs begs "for serious feminist consideration,"²¹ an iteration of first departure from Halley. In *Sexual Semiosis* Gaines is less interested in Taking a Break from Feminism as she is in Giving Feminism a Break, not by a reflexive defense of feminism's forever-and-always utility, but by opposing feminist theory "as establishment,"²² breaking with some of its curiously doctrinal presumptions about women's power(lessness) within, for example, the disciplining of sex by marriage law. "Can we give feminism a break long enough to study the emergence of what we might call 'popular feminism?'" Gaines asks, instructively.²³ It is perhaps at the level of the popular ("where," as Halley says, "power meets the population,"²⁴) that Gaines makes her most important intervention. For Gaines, how effectively any sex project, in popular feminism or queer theory, illuminates the disciplinary instrumentality of sex within "the history of a 'law of husband and wife' in the United States"²⁵ is ultimately the best test of its mettle. Alive to a place Halley

16. Leo Bersani, *Is the Rectum a Grave?*, 43 OCTOBER 197 (1987), reprinted in AIDS: CULTURAL ANALYSIS, CULTURAL ACTIVISM 197 (Douglas Crimp ed., 1988).

17. Duncan Kennedy, *Sexual Abuse, Sexy Dressing, and the Eroticization of Domination*, 26 NEW ENG. L. REV. 1309 (1992), reprinted in DUNCAN KENNEDY, SEXY DRESSING ETC. 126 (1993).

18. Halley, *supra* note 9, at 38.

19. 855 S.W.2d 619 (Tex. 1993).

20. Jane M. Gaines, *Sexual Semiosis*, 11 DUKE J. GENDER L. & POL'Y 55, 56 (2004).

21. *Id.*

22. *Id.* at 57.

23. *Id.* at 59.

24. Halley, *supra* note 9, at 48.

25. Gaines, *supra* note 20, at 64.

doesn't go, *Sexual Semiosis* takes *Queer Theory by Men* there, as Gaines posits the problem of "marital monogamy"²⁶ as a legalized monopoly on a women's body, in a still deeper interrogation of the kind of decisional conundrum represented by *Twyman v. Twyman*.²⁷

If Gaines' *Sexual Semiosis* seems most concerned with the possibilities of advancing sexuality studies precisely where *Queer Theory by Men* resists treading, Ranjana Khanna's comment to Halley, *Signatures of the Impossible*, is dedicated to the redress of a much-maligned cultural feminism.²⁸ From the first, Khanna casts suspicion on Halley's version of the conceptual and political limits of cultural feminism, not only questioning whether "feminism, any more or less than queer theory, really [has] to be primarily about gender and the logic of m/f,"²⁹ but underlining as well the manifest illogic of the persistent conditions of gender subordination rendered, in effect, unassailable now by the so-called gender-free discourse left in the wake of an abdication of feminism. Khanna is no fan of Taking a Break from Feminism, not least because the very idea of its discursive possibility is "misguided" and a "ploy that is complicit with a neo-liberal heterosexist paradigm"³⁰ that queer theory, in spite of Halley, has set about to dismantle. In making her case unequivocally *against* Halley's anti-feminism, however, Khanna follows a decidedly psychoanalytic tack, arguing rigorously with Halley's neglect of Bersani's Freudian background, especially, in making his (Halley's) case for the utilitarian appeal of certain queer speculations on sex by male theorists. As a result, Halley mistakes the seeming radicality of Bersani's queer commitment to self-dissolution through a sexual *jouissance* "as something peculiar to homosexuality rather than to [the psychoanalytic category] of melancholia more generally."³¹ He is therefore blind to the critical way in which both the melancholic and the gay man's self-shattering cannot avoid the stubborn trace of the past self pressed into their respective psychic archives. Perhaps more arrestingly, inside of this melancholic framework, Halley's disavowal of feminism carries the inescapable reminder of its remainder, despite his indifference to it. Thus, "Ian has not put feminism into question," Khanna concludes; instead, "he has acted out through disavowal" the impossibility of feminism's full undoing.³²

As Khanna's title hints at, and her article confronts intrepidly, much is to be made of the signatory difference obtaining between a past "Janet Halley," the 2002 Brainerd Currie lecturer and author of the first draft of *Queer Theory by Men*, and a more recent "Ian Halley," signatory of the article published here. While Khanna submits the difference to a productively Derridean psychoanalysis ("Ian seems to want to write as if a signature really can do the work of sustaining self-identity, coherence, prior and future existence . . . all of which is put into doubt by the very necessity of it."³³), Robyn Wiegman's *Dear Ian* is more

26. *Id.* at 65.

27. 855 S.W.2d 619 (Tex. 1993).

28. Ranjana Khanna, *Signatures of the Impossible*, 11 DUKE J. GENDER L. & POL'Y 69 (2004).

29. *Id.* at 71.

30. *Id.* at 74.

31. *Id.* at 83.

32. *Id.* at 90.

33. *Id.*

steadfastly interested in demonstrating what the signatory difference means in light of the consequence that Taking a Break from Feminism in this case resigns to a man, Ian, a critical space of knowledge production about women formerly maintained by a lesbian, Janet. In an epistolary response, Wiegman addresses Halley directly, questioning “hir” strawman construction of both “a highly disciplined and disciplining”³⁴ normative feminism whose urgent refusal thus creates the space of Ian’s usurpation and the counterfiction of a wider, epistemically freer *queer* epistemology, ethically unimpeachable. Alternately impatient and sympathetic, Wiegman sets out to correct certain of Halley’s assumptions about the convergentist capacity of feminism and queer theory that both underwrite Halley’s belief in the feminist failure in sexuality studies and inspire its abandonment in a politics of vigilant divergentism. Feminism and queer theory, Wiegman emphasizes, are not altogether analogous projects as Halley supposes. Between them are “discordant temporalities” that, in fact, militate against convergentist ambitions.³⁵ These discordant temporalities are crucial to Wiegman’s critique of *Queer Theory by Men* and Halley’s fundamental reinforcement of the heterosexist framework that, in the interest of foregrounding the erotic economies of *men’s* sexual interests, straight and gay, erases, Wiegman points out, the lesbian figure altogether.

Wiegman posits five discriminations at the base of the temporalities dividing feminism and queer theory. She argues, first, that queer theory’s capacity to deconstruct certain of feminism’s historical presumptions is evidence of neither “the enduring truth of the queer theoretic” nor “the faulty logic of feminism,”³⁶ but rather of queer theory’s instrumentality in making legible the nuance between what is finally a knowledge project (for example, feminist epistemology, queer theory) and what is, on the other hand, an academically informed reform agenda (for example, gay and lesbian studies, popular feminism). Second, critique alone is insufficient to produce the divergence Halley believes *Queer Theory by Men* to perform. It is only a part of the bigger process by which divergence brings to light the difference between what Wiegman’s calls “the social movement formulation of identity studies”³⁷ and the knowledge project(s) beneath identity production and politics. Third, while it is important to recognize the distinction between dedicated knowledge projects and reform efforts (per Wiegman’s first articulation of discordant temporalities), social movements are themselves knowledge projects too that help to foreground the politics of knowledge production—what we know, who knows it, and how to organize what we think we know—in and around the academy. Fourth, the study of identity and its politics cannot be properly understood apart from a consideration of the social field that confers its inaugural currency, nor can such study be limited to social fields alone. Finally, Wiegman proposes that, contrary to the popular belief that institutionalization undermines movements, the institutionalization of identity studies as, say, Women’s Studies or Gender Studies, may well be an important part of the divergentist wish to bring into view and formal-

34. Robyn Wiegman, *Dear Ian*, 11 DUKE J. GENDER L. & POL’Y 93, 94 (2004).

35. *Id.*

36. *Id.* at 106.

37. *Id.* at 107.

ize new complementing genealogies of identitarian knowledge and their limits. All of these discriminations, Wiegman puts forward in the service of an argument *for* a politics of divergence that nevertheless issues from very different motives than Halley's. *Dear Ian* urges Halley toward an expanded consideration of the politics of divergentism. In a way, feminism lives, however embattled, and is preserved, however precariously, by just such a politics. Under a divergentist commitment, Taking a Break from Feminism may be infinitely easier said than done.

Insofar as the three response pieces by Jaine Gaines, Ranjana Khanna, and Robyn Wiegman, all, in greater or lesser volume, seem earnest in their effort to persuade Ian Halley of the unimaginable difficulty of Taking a Break from Feminism, it would seem that, despite its convergentist aversion, and for all its talk and text about divergentism, *Queer Theory by Men* has provoked a productive convergence of theoretical voices after all. On the state of feminism, on sex and the social, on the law and the politics of positionality (in marriage, in sex acts, in institutions), to say nothing of the curiosity of queer theory by men, these are divergently suggestive essays—all four them—each one in its own right. But the conversation they enact here in the *Duke Journal of Gender Law and Policy* is very nearly a convergentist's fantasy.