REVIEW ESSAY

SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM

By Janet Halley


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In January 2012, an Indian newspaper reported a court case where a man and his male lover had been booked by the police under the provision of the Indian Penal Code (IPC) that criminalises sodomy (Section 377) at the behest of the man's wife of 18 years.1 The man was also booked under Section 498A of the IPC that makes infliction of mental or physical 'cruelty' upon the wife an offence. How do we tell who is the person who is harmed in this case? Is feminism bound to be a natural choice while choosing an analytical lens with which to look at this case? And who is more likely to emerge as the harmed person in this case when we look at it through the analytical/political position of feminism? Is the harm suffered by the man and his lover, of being held guilty of an offence for having consensual sex, necessarily occluded if we look at the case as feminists? Does feminism have within its political aspirations and commitments, the space from which it can take up the cause of the man and his lover as harmed persons? And if we choose some other lens that throws into focus the harm suffered by the men in this case, does it mean that we have to kill feminism in order to proceed with such an enquiry? Situations and questions such as these animate Janet Halley's book, Split Decisions: How and Why to Take a Break from Feminism. Halley argues – passionately and provocatively – that we must be willing to 'take a break from feminism' while theorising sexuality, in order to critically evaluate such cases and our responses to them.

While the immediate focus of the book are theories of sexuality and power produced by Left-oriented academics in the US over the last twenty five years, Halley's larger project is to develop a 'politics of

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theoretic incommensurability. That is, Halley wishes to persuade her readers to value many theories about a problem and their refusal to fit neatly with each other, instead of one all-encompassing theory that does not leave any loose ends. Halley finds such 'total' theories dogmatic, insipid and the perfect place for experiencing paranoia and paralysis when one confronts real-life experiences that do not fit the preferred grand theory. The particular attitude to theory that Halley desires for herself and others in the Left, is one that reveals the world:

[a]s a normatively fraught, contradictory, conflictual place, a place where interests differ, change over time, and come into zero-sum conflicts, a place where all our decisions – even our decisions to abstain from deciding – shift social goods among highly contingent but pressing, urgent, vital interests.

Secondly, Halley prefers to deploy theory to form hypotheses about the world instead of deploying it prescriptively. That is, Halley prefers to use 'theory fragments' that are lying about, 'instrumentally, pragmatically and disloyally' to deal with the problems that she is working on instead of demanding that theory describe the reality for her, illuminate the good and bad aspects of that reality and also direct her towards normative emancipatory goals.

In rest of the brief first part of the book, Halley sets out, why she feels feminism, as it is encountered in the contemporary US, stands in the way of developing such a posture to theory in general and theorising sexuality in particular. Halley contends that three commitments characterise feminism in its various avatars in the US. They are, one, that feminism is the theory of the subordination of women/femininity/female-gender/associated ideas, by men/masculinity/male-gender/associated ideas, and its task is to work against such subordination; two, that sexuality is the fundamental location where this subordination takes place and feminism is an indispensable part of any theory of sexuality or gender; and three, that one overarching theory is better than many parallel or conflicting ones and the goal of our work is to integrate or converge alternative theories about sexuality, gender and power.

In the second part of the book, through a close reading of key texts on the politics of sexuality as it developed in the US, Halley tells the story of the struggle between those wanting to retain feminism as a

3. Id. at 3.
4. Id. at 7.
5. Id.
preferred analytical/political framework for theorising about sexuality and those wanting to 'take a break' from it. Along with the 'power feminism' exemplified by Catherine MacKinnon's work and the 'cultural feminism' exemplified by the work of Robin West, the early characters in this story are the 'hybrid feminisms' that, in addition to the sexual welfare of women, have parallel commitments to socialism, anti-racism or anti-imperialism. The occasional divergence of these feminisms from treating sexuality as the fundamental contradiction in society is a source of continuous tension and discomfiture. Gayle Rubin bursts onto this stage with her pioneering essay, Thinking Sex, written in the midst of the sex wars among the US feminists in the eighties where she questions the privileged status of feminism in theoretical/political work on sexuality.\footnote{Gayle Rubin, Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality, in Pleasure and Danger: Exploring Female Sexuality (Carole S. Vance ed., 1984).}

Without denying the relevance of feminism, Rubin calls for developing an autonomous politics and theory for thinking about sexuality. So if MacKinnon is the chief antagonist in Halley's story, Rubin is clearly her protagonist and Halley comes back to Rubin from time to time throughout the book to substantiate her arguments and to display the historical roots of her project. The influence of Michel Foucault's work on power, departing fundamentally from feminism's conception of power as top down oppression, intensifies the desire for 'taking a break'. Eve Sedgwick's and Judith Butler's work problematising the essentialism and even heterosexism of the categories of sex and sexual identity and Leo Bersani's and Duncan Kennedy's work on sexuality from the vantage point of men's erotic interests, leads to the realisation of the 'break'.\footnote{Halley, supra note 2, at 187.}

As the story progresses, the debate turns towards the territorialisation of sexuality within queer theory and Lesbian and Gay Studies while gender is assigned to feminism and Women's Studies. Somewhere along the way, postmodernism comes in and disrupts the very category of 'woman,' the very constituency that feminism claims to represent. Throughout the nineties, while some feminists are engaged in negotiating a better deal for feminism by resisting any division of 'proper objects' of study and advocating an integrated analysis of gender and sexuality, others worry about the debilitating effect of postmodernism on feminist foundations, politics and emancipatory ideals. This feeling of a crisis or an impasse in feminist academic work is characterised by Halley, as 'feminist paralysis'.\footnote{Halley, supra note 2, at 187.}
on the face of it, things in the world do not appear to be structured by the subordination of all things feminine by all things masculine, deeper investigation would reveal, that it is actually so – and the 'moralized mandate to converge' – the moral demand to integrate accounts of sexism with other forms subordination into a seamless, synergistic system, where any failure to do so amounts to reinstating the un-integrated, un-incorporated axis of subordination.

Halley argues that such anxiety is misplaced and can be totally dispensed with if one thought of theory as a resource for developing hypotheses about a complex, contradictory world and not expect theory to produce normative aspirational insights for us. Such an attitude to theory makes it more critical and less hostile to dissimilar, even inconsistent, theories. Such an attitude to theory would enable us to accept that while feminism might be better equipped to illuminate particular stakes in a given problem, it may not be the best tool for getting a grip over other aspects of that situation or some other problem. So if those in the Left choose to bracket feminism for some time and turn to other hypothesis-producing analytical tools to get a grip over the dynamics of sexuality, it need not be experienced either as an elision/denial/ repudiation of feminism or hurting/silencing/dismembering 'real' women.

Armed with these insights, in the third part of the book, Halley gets down to the actual business of 'taking a break from feminism'. Halley's first example is the case of workplace accommodation of pregnant women and feminist advocacy insisting that the employer must be made to do so as a legal duty. Against the grain of received feminist wisdom that such accommodation must be made 'costless', Halley argues that the costs do not disappear, they just shift to some other location. The costs might just be borne by the Blacks, third world workers or even women in the informal economy. Halley argues that unless we 'take a break from feminism' we would not be able to see who eventually ends up bearing these costs and what constituencies are hurt by the same.

Halley's second example is the US Supreme Court decision in Oncale v. Sundowner Offshore Services, Inc. [523 US 75 (1998)] recognising same-sex sexual harassment at the workplace as actionable cases of sex discrimination. Halley shows that the reasoning of the Supreme Court in this case tracks the line of reasoning and assumptions in cross-sex sexual harassment cases, which is deeply informed by MacKinnon's power feminism: sexual harassment as an instance of male dominance and female submission, producing male and female genders. Against the feminism-inspired reading of the case in Oncale that was adopted by
the Supreme Court, Halley offers a gay identity-affirmative reading and a queer theory reading of the details of the case, to show possibilities very different from the sexual-dominance-of-a-feminised-man kind of scenario. When 'facts' are unpredictable and unknowable, as Halley's reading of the case shows, we must know that 'we will always do violence when we decide.' And so how can we think responsibly about the violence of our decision in such situations? For Halley, to arrive at the answer to this question, one must be willing to 'take a break from feminism' and allegiance to any single theory about sex and power.

Halley's final example is the 1993 Texas Supreme Court decision in *Twyman v. Twyman* [855 S.W. 2d 619 (Sup Ct. Texas 1993)]. The case concerned a divorcing couple where the wife brought a tort claim against the husband arguing that his insistence on sex involving bondage had caused her emotional distress. The questions that the judges had to answer in order to decide the claim was what particular act of the husband constituted the cause of action and in what sense did it cause distress to the wife. To the judges, those encounters where the couple engaged in bondage at the insistence of the husband constituted the outrageous bit but not those instances of vanilla sex which had left the wife with gynecological injuries. Additionally, though the facts maintained that the wife had willingly, though reluctantly, engaged in sadomasochistic sex, the judges were keen to discount the wife's agency because she had agreed to do so in order to save her marriage. Halley argues that the judicial opinions in this case are shot through with elements of power and cultural feminism: male power and female submission; lack of female agency even when she is engaged in a bargain; male insistence on deviant sex backed by threat of divorce and female silent sufferance to save the marriage; the necessarily deviant nature of BDSM, which erotisises that very thing that causes women's subordinated status in society, i.e. domination in sex.

The Texas Supreme Court decision allowing infliction of emotional distress as an actionable claim between spouses is, in this reading, nothing but a justified reparation of the harm suffered by the wife. Halley's counter question is: 'Can feminism acknowledge that women emerge from the court's decision with new bargaining power in marriage and a new role as enforcers of marital propriety?' Once again, Halley shows the upsides of 'taking a break' by reading the facts of this case with the lens of 'slave revolt in morals' from Friedrich Nietzsche's *Genealogy*

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8. *Id. at 301.*
9. *Id. at 356.*
of *Morals* and Michel Foucault's idea of power without dominance/subordination elaborated in *The History of Sexuality*, *Vol. I*.

In her re-readings of all the cases mentioned above, Halley explicitly acknowledges her preference for queer theory despite her own detection of strains of structuralism in some versions of the same.10 If the structuralism of 'some' versions of queer theory does not dissuade Halley from completely turning away from it for hypothesising, one wonders why the same diagnosis in feminism leads her to 'take a break' from the whole of 'feminism.' If the objective is to avoid pre-determined outcomes issuing from particular versions of feminism, then one can do so and yet be a feminist and produce feminist work on sexuality. Even Rubin in *Thinking Sex* made a distinction between the anti-porn feminists who saw all forms of erotic pleasure and sexual expression as saturated with male domination and the sex radical feminists, who she thought (but did not discuss in detail), could contribute to a radical theory of sex. Halley's conception of feminism throughout the book appears to be as rigid as MacKinnon's and West's conception of sexuality that Halley is committed to oppose.

Turning to Indian feminist debates on sexuality for a moment, we can see how interventions over the last two decades have loosened the grip of the notion that sexuality is the domain where women are invariably harmed by men's sexual domination over them. The ones to challenge and dislodge such notions have been feminists themselves. Shohini Ghosh for instance has criticised feminist efforts to regulate sexual images and speech from a feminist position that seeks to create 'space for greater sexual expression on the part of women.'11 Ratna Kapur has a sex-affirmative, feminist critique of the current Indian anti-sexual harassment legal regime, which was a product of feminist demands.12 Similarly, Prabha Kotiswaran's recent work on the legal regulation of sex work is a feminist critique of feminist initiatives on sex work and trafficking.13 Thus, looking at the current Indian feminist engagement with sexuality, it cannot be maintained that feminism is always a theory of sexual subordination of women. Further, the work of feminist scholars such as Nivedita Menon shows that instead of being subsumed

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10. *Id.* at 202, 206.
within familiar feminist categories of pleasure/danger, non-normative sexualities and gender identities open up newer questions relating to identity, citizenship and nation, for feminism to confront and engage with.\textsuperscript{14} Thus Indian feminism at this juncture not only acknowledges sexuality minus subordination, it also acknowledges male sexuality by recognising the harm suffered by homosexual men due to the criminalisation of sodomy. However, despite the 'official' position of the Indian women's movement regarding homosexuality,\textsuperscript{15} it remains to be seen how individual feminists may respond to cases such as the one that I began this review with.

In proposing that we 'take a break from feminism' in matters relating to power and sexuality, Halley is aware of the costs that we might incur. She nevertheless believes that the costs are worth paying when compared to the possible advantages of 'taking a break'. Chief among them is that it would enable feminism to acknowledge its own rising influence and power as a mode of governance with considerable local and international purchase. Further, it would enable feminists to break out of the 'politics of injury' accompanying so much feminist work on sexual violence. Giving a Foucauldian spin to the issue of women's sexual sufferance, Halley asks what if the experience of sexual subordination of women that feminism claims to speak from were produced by, were an 'effect' of feminism itself?

Could feminism be like adults on the playground? Imagine: the little girl stumbles, falls, scrapes her knee. She is silent, still composed, waiting for the kaleidoscope of dizziness, and surprise to subside. Up rush the adults, ululating in sympathy, urgently concerned – has she broken her leg? Is she bleeding? How did it happen? We must not let it happen again! Poor thing. The little girl's silence breaks – for the first time afraid, she cries.\textsuperscript{16}

The privileging of sexual harm above everything else and the assumption of women's sexual victim hood in international and domestic feminist justice projects has increasingly come under critical scrutiny in recent times.\textsuperscript{17} But all these interventions, while recognising the problematic nature of contemporary dominant feminism's engagement


\textsuperscript{15} Resolution on Section 377 passed in the 11\textsuperscript{th} conference of the Indian Association of Women's Studies in 2005 in Goa (on file with author).

\textsuperscript{16} Halley, supra note 2, at 346.

with sexuality, maintain some redemptive scope for feminism. Halley's project appears provocative as it denies any such redemptive chance to feminism in the politics of sexuality. But it may be pointed out that Halley's project is distinct from these critical projects as it is pitched at a more fundamental level; her focal concerns being the politics of theory-making and its distributive consequences. Looking at sexuality through inconsistent theories with divergent political commitments is of immense value in illuminating the stakes in situations such as the one mentioned at the beginning of this piece. Thus even if one thinks that Halley overstates the power of feminism in the contemporary world and in the legal system, one just cannot deny the methodological insights that she produces. As one of the reviewer's comments printed on the book's blurb states, "Split Decisions is more than a critique; it initiates a paradigm shift." Even if one decides eventually to not 'take a break from feminism' or any other social theory that one is committed to at the moment, the reader of this book cannot be unaffected with respect to how he/she thinks of theory, method, critique and the role of law.

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