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# *Sexuality, Queer Theory, and “Feminism After”: Reading and Rereading the Sexual Subject*

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Although some scholars no longer see a place for feminist theory in analyses of sexuality, this article shows that there are lessons to be learned by examining queer theory through the lens of feminism. The author undertakes several feminist and then queer theory readings of the film *Secretary* and the divorce case, *Twyman v. Twyman*. This article shows that feminism, despite being sometimes perceived as “anti-sex”, can be helpful in understanding sexuality. The author argues that feminism may sometimes need to suspend its focus on gender. She also shows how bringing gender back into the analysis can shed greater light on how law and society deal with sadomasochism and other forms of sexual expression. While her discussion is structured mainly along disciplinary lines, she suggests that it may be time to worry less about intellectual territory and more about intellectual trespass.

Si certains spécialistes jugent que la théorie féministe n’a plus sa place dans les analyses de la sexualité, cet article tente de démontrer qu’il y a des leçons à tirer d’un examen de la *queer theory* sous l’angle féministe. L’auteure entreprend plusieurs lectures, parfois féministes et parfois inspirées de la *queer theory*, du film «Secretary» et d’une affaire de divorce, *Twyman v. Twyman*. L’article se propose de démontrer que même s’il est parfois perçu comme opposé au sexe, le féminisme peut aider à comprendre la sexualité. L’auteure soutient que le féminisme doit parfois devoir mettre en veilleuse son insistance sur les identités sexuelles. Elle veut également montrer de quelle manière l’inclusion des identités sexuelles dans les analyses de discours peut permettre une meilleure compréhension de la manière dont le droit et la société traitent du sadomasochisme et d’autres formes d’expression sexuelle. Si son analyse se conforme dans l’ensemble aux lignes disciplinaires usuelles, l’auteure suggère néanmoins que le temps est peut-être venu de s’inquiéter moins de territorialité intellectuelle et davantage d’intrusion intellectuelle.

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\* Professor of Law, University of Toronto. An earlier version of this paper appeared in (2003) 12 Colum. J. Gender & L. as part of a published dialogue with Janet Halley, Dan Danielson, and Tracy Higgins. I am indebted to each of them for their commentary and engagement. The ideas in this paper were first developed in an exchange with Janet Halley at Harvard Law School, November 2001. I would like to thank her for her intellectual generosity and provocation in all of our engagements.

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### Introduction: Pre/Post/Anti Feminism

In the film *Secretary*, Lee Holloway is a young woman who comes to embrace her masochism through her relationship with her lawyer boss E. Edward Grey.<sup>1</sup> Grey likes to discipline his secretary for even the most minor of spelling errors, and Lee, it turns out, likes to be disciplined. Lee learns to redirect her psychic trauma: once a self-mutilator, she becomes a proud submissive who makes mistakes in order to attract the ire of her employer, and if she is lucky, a humiliating spanking. While Grey has difficulties accepting his own dominating proclivities—he is plagued by self-loathing and shame—Lee obsessively embraces her new, highly erotically charged submissive self. When he tells her that they cannot continue, that they cannot perform their bondage/domination (“B/D”) relationship “24/7”, she persuades him otherwise, and in a demonstration of her submissive commitment, sits for days in a chair at Grey’s desk without moving her hands or feet (in a wedding dress, no less). She gets her man, and they live happily ever after. It is an ironic, romantic comedy for the B/D set.

For some, the film *Secretary* might be seen as an anti-feminist track, an attack on the political correctness of feminism’s anti-sex, a queer celebration of shame and desire, and/or a celebration of the submission of at least one woman. Indeed, the film traffics in the idea that the “official feminist” would be outraged with its premise. For example, during Lee’s vigil at the desk, a parade of characters and commentary includes several appearances by her friend Alison, who condemns Lee’s choices in no uncertain terms. During one visit, she judgmentally asks “Why in the world would you—who can be anything you want to be—choose to debase yourself like this? Why would you give up all your power? Why would you spit upon everything that women have worked for all these decades?”<sup>2</sup> In a second visit, Alison deposits a large stack of feminist books on the desk, saying “If you want to ruin everything women have worked for, why don’t you read about the struggle first? Why don’t you find empowering ways to live your life?”<sup>3</sup>

More than one film reviewer has commented, in passing, on the received wisdom that feminists will disapprove of, if not hate, this film.<sup>4</sup> The most common story told

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<sup>1</sup> *Secretary* (2002), directed by Steven Shainberg, screenplay by Erin Cressida Wilson, distributed by Lions Gate Films.

<sup>2</sup> Erin Cressida Wilson, *Secretary: A Screenplay* (New York: Soft Skull Press, 2003) at 100.

<sup>3</sup> *Ibid.* at 101.

<sup>4</sup> “Feminists Will Hate This Movie,” writes reviewer, Merle Bertrand (*FilmThreat* (7 September 2002), online: <http://www.filmthreat.com/Reviews.asp?Id=2724>). Slant Magazine reviewer, Ed Gonzalez writes “*Secretary* May Fray Some Feminist Nerves” (“*Secretary*” *Slant Magazine* (September 2002), online: [slantmagazine.com <http://www.slantmagazine.com/Film/Film\\_review.asp?ID=364>](http://www.slantmagazine.com/Film/Film_review.asp?ID=364)). Carlo Cavagna in AboutFilm.com writes that: “Traditional feminist thinking, of course, would see Lee’s behavior as incompatible with feminine equality. The analysis

by the reviewers rejects the feminist frame and sees *Secretary* as an unwavering celebration of sex and desire. The film is seen to challenge conventional sexual roles, center the erotic, and return shame to its rightful place in desire. It throws off the shackles of political correctness and explores the complexities of sexual attraction. Lee, as the masochistic bottom, is the protagonist; she makes the story happen—for herself, her boss, and the film. She may be a slave, but she is no pushover. She knows what she wants. She knows how to get it. And she is not ashamed to admit it to friends and family. She is a post-feminist heroine.

In the popular imagination, the film represents the antithesis of feminism. As a lighthearted frolic through the erotically charged minefield of domination and submission, celebrating the masochism of Lee Holloway, it is everything that feminism is not: sexual, playful, funny. The film is illustrative of the extent to which feminism has come to be associated with sexual negativity, that is, with an anti-sex attitude that seeks to regulate and suppress consensual sexuality. While this popular impression of feminism obscures the diversity and complexity of contemporary feminism, it is at the same time symptomatic of feminism's troubled relationship with sexuality. Sado-masochism ("S/M"), and its cousins, bondage and domination, have been a contested terrain for feminism.<sup>5</sup> While radical feminism condemns its objectification of women and its eroticization of violence, sex radical feminism has sought to carve out a space for sexual pluralism and the pursuit of alternative

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would be that Lee is objectified, used, and the repository of all Mr. Grey's abusive male desires." He further observes that

[i]n any event, if the roles were reversed, the gender politics of the relationship would not need to be discussed. The roles could easily be reversed. You could make almost exactly the same movie with male Lee and a Ms. Grey ... or with two men ... or with two women. Only when the male is dominant and the female is submissive do people insist on seeing the relationship as an expression of society's patriarchal power structure. ("Secretary" *AboutFilm.com* (September 2002) online: [AboutFilm.com <http://www.aboutfilm.com/movies/s/secretary.htm>](http://www.aboutfilm.com/movies/s/secretary.htm)).

New York Times reviewer, Stephan Holden writes, "Some may see 'Secretary,' which opens today in Manhattan and Los Angeles, as a slap in the face to orthodox feminist thinking, since the concept of sexual harassment doesn't seem to occur to anybody." Holden then argues against viewing this film through such a gendered lens: "Film Review: An Office Disciplinarian Gets His Way in the End" *New York Times* (20 September 2002) E12, online: <http://www.nytimes.com>.

<sup>5</sup> The issue of sado-masochistic sexuality has been a highly contentious and fractious one within feminism. For arguments against S/M, see Robin Ruth Linden *et al.*, eds., *Against Sadomasochism: A Radical Feminist Analysis* (East Paolo Alto, CA: Frog in the Well, 1982); Cheryl Hanna, "Sex is Not a Sport: Consent & Violence in Criminal Law" (2001) 42 B.C.L. Rev. 239. For arguments in favour of S/M, see SAMOIS, ed., *Coming to Power: Writings and Graphics on Lesbian S/M*, 3d ed. (1981), particularly the article by Gayle Rubin, "The Leather Menace: Comments on Politics and S/M"; Pat Califia & Robin Sweeney, eds., *The Second Coming: A Leather Dyke Reader* (Los Angeles: Alyson Publications, 1996); Pat Califia, "Feminism and Sadomasochism" in Pat Califia, *Public Sex: The Culture of Radical Sex* (Pittsburgh: Cleis Press, 1994) 165; Monica Pa, "Beyond the Pleasure Principle: The Criminalization of Consensual Sadomasochistic Sex" (2001) 11 Tex. J. Women & L. 51; Sangeetha Chandra-Skeheren, "Theorising the Limits of 'Sadomasochistic Homosexual' Identity in R. v. Brown" (1997) 21 Melb. U.L. Rev. 584.

sexualities. Yet, the not-so-subtle subtleties of these conflicts are lost in the hegemonic voice of feminism—and its caricature within popular culture—where feminism has come to be associated with the anti-sex tendencies of the former, not the sex positive tendencies of the latter. Nor is this simply a problem of translation from theory to practice, from the intellectual to the popular sphere, although it is partially that. Rather, the problem is also symptomatic of deeper tensions with feminism, and its theorizing of the sexual.

Feminist theory's contribution to the analysis of sexuality has been profound, revealing sexuality as a site for the production of gender and the operation of power. But, feminism's analysis of sexuality has also been fraught. The sex wars of the 1980s divided feminists into those who framed sexuality primarily as a site of danger and oppression for women and those who saw sexuality more ambivalently, as also a site of pleasure and liberation. Some critics, notably Gayle Rubin and Eve Sedgwick, began to suggest that the study of sexuality needed a degree of independence from feminism, and that sexuality and gender be conceptualized as two distinct domains of analysis.<sup>6</sup> Lesbian and gay studies and queer theory took up the defining challenge of theorizing sex and sexuality in an analytic framework independent of gender. This rupture with feminism has produced a sophisticated literature on sex and sexuality, allowing more focused attention on a troubling hetero-normativity than the framework of feminism, with its focus on male-female relationships, had allowed.

This rupture has also produced a somewhat stultifying divide. Gender is allocated to feminism while sexuality is allocated to gay and lesbian studies/queer theory.<sup>7</sup> Feminism and queer theory are, in turn, cast in an antagonistic relationship, their differences incommensurable. For queer theory, feminism is reduced to one side of the sex wars—those who seek to regulate the harms that sexuality presents for

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<sup>6</sup> Gayle Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality" in Carole Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* (New York: Routledge, 1984) 267 [Rubin, "Thinking Sex"] arguing that "an autonomous theory and politics specific to sexuality must be developed" (at 309). In her view, although feminist theory has made an important contribution to gender-based hierarchies within the realm of sexuality, "as issues become less those of gender and more those of sexuality, feminist analysis becomes irrelevant and often misleading. Feminist thought simply lacks angles of vision which can encompass the social organization of sexuality. The criteria of relevance in feminist thought do not allow it to see or assess critical power relations in the area of sexuality" (*ibid.*).

Eve Kosofsky Sedgwick, *Epistemology of the Closet* (Berkeley: University of California Press, 1990) similarly argued for a theory of sexuality distinct from feminism's theory of gender: "This book will hypothesize, with Rubin, that the question of gender and the question of sexuality, inextricable from one another though they are ... are nonetheless not the same question, that in twentieth-century Western culture gender and sexuality represent two analytic axes that may productively be imagined as being as distinct from one another as, say, gender and class, or class and race" (at 30).

<sup>7</sup> See e.g. Henry Abelove, Michèle Aina Barale & David M. Halperin, eds., *The Lesbian and Gay Studies Reader* (New York: Routledge, 1993) arguing that gender is the central category of analysis for feminism, while sex and sexuality are the central categories of analysis for gay and lesbian studies.

women, while queer theory casts itself as a more liberatory politic that seeks to destabilize the disciplinary regulation of sexuality. For feminism, queer theory is reduced to a sexual libertarian and representation politics devoid of ethicality, unconcerned with the material conditions of women's and other oppressed people's lives in general, and the role of sexuality in producing inequality in particular. It is a divide that traffics in stereotypes; in the worst stereotypes of the sins of the "other". It is a divide that breeds the counter-narratives about *Secretary*: regressive anti-feminism versus liberatory queer sexuality. It is a divide that obscures the important contributions that feminism has made to the study of sex and sexuality, as well as the schisms and conflicts within feminism on the question of sex and sexuality.<sup>8</sup> The sex wars that raged through the 1980s, and erupted from time to time through the 1990s, have disappeared.<sup>9</sup> As Judith Butler observes, "feminism has become identified with state-allied regulatory power over sexuality ... [and] those feminist positions which have insisted on strong alliances with sexual minorities and which are skeptical of the consolidation of the regulatory power of the state have become barely legible as 'feminist.'"<sup>10</sup> It is a divide that obscures significant currents of both feminist and queer thought, and that fails to interrogate the more productive potential of analyses that lies in the interstices of gender and sexuality, feminism and queer theory.<sup>11</sup>

In a more recent intervention in the feminism/queer theory debates, Janet Halley has provocatively argued that it is time to "take a break from feminism". Halley has demonstrated the conflicts between dominant variants of feminist critique and queer theory in the context of sexual harassment law, with feminist "victories" producing queer theory losses. She argues that it may be time "to urge feminists to learn to suspend feminism, to interrupt it, to sustain its displacement by inconsistent hypotheses about power, hierarchy and progressive struggle."<sup>12</sup> She defines feminism as having three shared features: "First, to be feminism, a position must make a

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<sup>8</sup> See Judith Butler, "Against Proper Objects" in Elizabeth Weed & Naomi Schor, *Feminism Meets Queer Theory* (Bloomington: Indiana University Press, 1997) 1, arguing against this allocation of "proper objects" of study to feminism and queer theory [Butler, "Against Proper Objects"].

<sup>9</sup> On the sex wars within feminism, see Vance, *supra* note 6 [Vance, *Pleasure and Danger*]; Ann Snitow, Christine Stansell & Sharon Thompson, eds., *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review Press, 1983); Carol Vance, "More Danger, More Pleasure: A Decade After the Barnard Sexuality Conference" (1993) 38 N.Y.L. Sch. L. Rev. 289; Lisa Duggan & Nan D. Hunter, *Sex Wars: Sexual Dissent and Political Culture* (New York: Routledge, 1995); Kathryn Abrams, "Sex Wars Redux: Agency and Coercion in Feminist Legal Theory" (1995) 95 Colum. L. Rev. 304.

<sup>10</sup> Butler, "Against Proper Objects", *supra* note 8 at 14.

<sup>11</sup> *Ibid.*

<sup>12</sup> Janet Halley, "Sexuality Harassment" in Janet Halley & Wendy Brown, eds., *Left Legalism/Left Critique* (Durham: Duke University Press, 2002) 80 at 102. See also Janet Halley, "Taking a Break from Feminism" in Brenda Cossman *et al.*, "Gender, Sexuality, and Power: Is Feminist Theory Enough?" (2003) 12 Colum. J. Gender & L. 601 [Halley, "Taking a Break"]; Janet Halley, "Take a Break from Feminism?" in Karen Knop, ed., *Gender and Human Rights* (Oxford: Oxford University Press, 2004) 57.

distinction between M and F ... [S]econd ... a position must posit some kind of subordination as between M and F, in which F is the disadvantaged or subordinated element.”<sup>13</sup> Finally, a position must advocate against this subordination, or in Halley’s words, it must “carr[y] a brief for F.”<sup>14</sup> This concern with the distinction and subordination between male and female, men and women, particularly as it has sedimented in dominant or governance feminism, operates to preclude a range of alternative insights into the workings of sexuality that could be seen through an alternative theoretical lens, such as queer theory.<sup>15</sup>

Halley’s methodology has allowed her to produce counter-narratives of the operation of power on the terrain of sexuality, narratives that were obscured from within feminism’s male/female binary. Yet, as a methodology, taking a break from feminism runs the risk of reproducing some of the problematic effects of the feminism/queer theory rupture. While Halley recognizes the diversity within feminism and the deep ideological divisions within feminism on issues of sexuality, thereby avoiding the simplistic feminism/queer theory, gender/sexuality dichotomies, “taking a break” from feminism risks leaving in place rather than “moving between” the polarized worlds.<sup>16</sup> It is a risk, however, that can be mitigated, paradoxically, by supplementing the break from feminism with feminism.

In my view, feminism after the critique of queer theory (“feminism after”)—particularly its focus on gender as an axis of power—continues to have analytic purchase. Feminism should not shy away from its expertise in analyzing the multiple operations of gender. Gender, when understood broadly as, in Joan Scott’s words, “a primary way of signifying relationships of power”<sup>17</sup>—a way in which material and symbolic resources are produced and distributed in asymmetrical ways—remains an important foundational and analytical frame of feminism. Gender still matters in the world in real and symbolic, discursive and material ways. But, it need not be an exhaustive analytic frame. Feminism, as an analytic lens on gender as an axis of

<sup>13</sup> Halley, “Taking a Break”, *ibid.* at 604.

<sup>14</sup> *Ibid.*

<sup>15</sup> It is important to emphasize that Halley’s idea of “taking a break from feminism” is *not* a renunciation of feminism, nor an anti-feminist position. It is simply a bracketing of feminism’s questions and its focus on the masculine/feminine distinction. Although she is extremely critical of “governance feminism”—the alliance of liberal, radical, and cultural feminism that has informed a range of regulatory approaches—she does not condemn all feminism with the same brush stroke. Her argument is often misconstrued as an anti-feminist renunciation. A more careful reading of her work reveals that it is not.

<sup>16</sup> The idea of “moving between” polarized positions is borrowed from Bidy Martin’s “Sexuality without Genders and Other Queer Utopias” (*Femininity Played Straight: The Significance of Being Lesbian* (New York: Routledge, 1996) c. 3). Halley’s focus on governance feminism—radical and culture feminism—similarly runs the risk of obscuring the potential insights of the multiple variants of more marginal feminisms that live more closely on the porous borders between the feminist and the queer.

<sup>17</sup> Joan Wallach Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988) at 42.

power, can and should be supplemented, challenged, and confused by other theoretical and analytic frames.<sup>18</sup>

I come to this critical inquiry as one who has in recent years partially given feminism a break. Much of my recent scholarly work has been animated by queer theory and other critical literatures. Feminism has not been a primary focus in my analyses of sexuality or family-related issues.<sup>19</sup> Yet, at the same time, I have never entirely let go of feminism and its focus on gender. In explorations of issues of both sexuality and family, I remain conscious of the ways in which cultural and legal discourses are often gendered. My work does not, however, read as self-consciously feminist—it is not a feminist analysis per se. I seem to be in fairly good company. My own drift is emblematic of a broader continental drift. Feminism, as a critical project, has lost much of the kinetic energy of its earlier incarnations. Indeed, it seems to have entered into a kind of stasis. Some describe the current moment as one characterized by brain drain as once self-described feminists have drifted to non-feminist pursuits.<sup>20</sup> Others have highlighted the problems of paralysis produced by the many internal critiques of feminism. Feminist theory has arguably come up against its own imaginative limits—there is no more to say; or there is no way to say it. The representational problems are insurmountable; the critique too devastating. For others,

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<sup>18</sup> Feminist theory has, since the mid 1980s, been grappling with the need to complicate gender analysis with attention to other crosscutting axes of power and subordination, including race, class, and sexuality. Analyses of racism, capitalism, and heterosexuality have been brought to bear on feminism's analysis of gender to produce a more nuanced and complex picture of intersecting identities and oppressions. See *e.g.* the following leading works of critical race feminism: Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*, 2d ed. (New York: Routledge, 2000); Angela Y. Davis, *Women, Race and Class* (New York: Vintage Books, 1983); Bell Hooks, *Feminist Theory: From Margin to Center*, 2d ed. (Boston: South End Press, 2000). On critical race feminism in law, see Angela Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 *Stan. L. Rev.* 581; Marlee Kline, "Race, Racism and Feminist Legal Theory" (1989) 12 *Harv. Women's L.J.* 115; Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color" (1991) 43 *Stan. L. Rev.* 1241; Adrien Katherine Wing, ed., *Critical Race Feminism: A Reader* (New York: New York University Press, 1996).

My critique, borrowing from Halley, is somewhat different. It is not about complicating our understanding about how gender works. It is about leaving gender behind. It is about exploring alternative theoretical and analytic frames that have nothing to do with gender, and about not necessarily trying to make these alternative frames consistent with feminism.

<sup>19</sup> On family-related issues, see *e.g.* Brenda Cossman, "Family Feuds: Neo-Liberal and Neo-Conservative Visions of the Reprivatization Project" in Brenda Cossman & Judy Fudge, eds., *Privatization, Law, and the Challenge to Feminism* (Toronto: University of Toronto Press, 2002) 169; Brenda Cossman & Bruce Ryder, "What is Marriage-like Like?: The Irrelevance of Conjugalinity" (2001) 18 *Can. J. of Fam. L.* 269. On sexuality issues, see Brenda Cossman, "Sexing Citizenship, Privatizing Sex" (2002) 6 *Citizenship Stud.* 483; Brenda Cossman, "Lesbians, Gay Men and the Canadian Charter of Rights and Freedoms" (2002) 40 *Osgoode Hall L.J.* 223. While some of it relies on feminist work, the focus is not, leading more than one reader to query whether it has anything at all to do with feminism.

<sup>20</sup> See Halley, "Taking a Break", *supra* note 12.



a kind of ennui has descended upon the critical project; it just is not where the intellectual action seems to be. It is not so much a rejection of feminism, nor an embrace of the post feminist, as it is a floating away.

Yet, I find myself uncomfortable with the idea of abandoning the critical project of feminism altogether. Analyzing sexuality without gender has its costs.<sup>21</sup> As Judith Butler has argued:

If sexuality is conceived as liberated from gender, then the sexuality that is “liberated” from feminism will be one which suspends the reference to masculine and feminine, reenforcing the refusal to mark that difference, which is the conventional way in which the masculine has achieved the status of the “sex” which is one. Such a “liberation” dovetails with mainstream conservatism and with male dominance in its many and various forms, thus to a large extent calling into question the assumed symmetry of “lesbian and gay”—a symmetry grounded in the separation of lesbian from feminist, of “sex” from sexual difference, a ground constituted through the enactment and covering of a split.<sup>22</sup>

In her view, “[p]olitically, the costs are too great to choose between feminism, on the one hand, and radical sexual theory, on the other.”<sup>23</sup> Instead she suggests that we pursue analyses that integrate feminism’s critique of gender hierarchy with queer theory’s critique of sex and sexuality. Katherine Franke has similarly argued for a retention of feminism in analyses of sex and sexuality: “I do not think that we should give up on feminism so easily. I think it is time that feminists reclaim the body as a site of erotic pleasure and intimacy and move these issues back into the center of our theories of sexual citizenship.”<sup>24</sup> She also argues for an exploration of the

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<sup>21</sup> Halley specifically recognizes many of the costs of “giving feminism a break”. She writes

[T]here are costs to Taking a Break from Feminism as well. They include: relaxing the epistemic vigilance that is needed to resist male epistemic hegemony; risking further splits among feminists at a higher conceptual location than most other splits, and thus risking new fissures in the intellectual, social, political, and legal endeavor; demobilizing and demoralizing feminists; laying oneself and one’s arguments open to cooptation by the enemies of women’s well being; legitimating male dominance generally and specifically.

She argues, however, that there are also costs to not giving feminism a break, including a brain drain from feminism, bad faith, power masquerading as servitude, and constituting women and their harms (*ibid.* at 607-608).

<sup>22</sup> Butler, “Against Proper Objects”, *supra* note 8 at 23-24.

<sup>23</sup> *Ibid.* at 18.

<sup>24</sup> See Katherine Franke, “Feminist Justice, at Home and Abroad: Women Imagining Justice” (2002) 14 *Yale J. L. & Feminism* 307 at 311. See also Katherine Franke, “Theorizing Yes: An Essay on Feminism, Law, and Desire” (2001) 101 *Colum. L. Rev.* 181 [Franke, “Theorizing Yes”] where she writes “It cannot be right that feminists should leave to queer theorists the job of providing an affirmative theory of sex that accepts and accounts for the complex ways in which denial, shame, context, prohibition, objectification, and power enable or capacitate desire and pleasure. Surely, a thick conception of gender, one that we would call feminist, should be brought to bear on this project”

“intersecting stakes that queer and feminist theory have in full theorizing questions of sexuality.”<sup>25</sup> Such a rapprochement of queer theory and feminism, and of gender and sexuality will, in my view, produce more complex and nuanced critique. Analyses of sexuality can be enriched by a resuscitated feminism, precisely because gender often continues to be an operative variable. It is not everything; nor is it nothing. Theorizing sexuality needs to be able to bring gender, as an axis of power, into view.

Such a rapprochement does not mean that feminism will have the last word. Feminism must also be attentive to the limits of its imagination. Feminism must sometimes leave its feminism behind, to suspend its interrogation of gender, however momentarily, to allow a critical engagement beyond its own imaginative borders. But, feminism must also be encouraged to travel back. I believe that a reinvigoration of feminist critique lies in both a return to, and a decentering of, feminism. In this essay, I endeavour to make a case for a kind of beyond-and-back-again feminism. I do so by providing multiple readings of two texts: a legal decision involving a claim for intentional infliction of emotional distress in relation to sado-masochistic sexuality and the film *Secretary*, involving dominance and submissive sexual activity. The sexual subjects represented in the case and the film present a challenge for feminism. Externally, the S/M sexuality represented in both the case and the film seems to inevitably conjure up the sexual negativity that popular culture credits to feminism. Internally, these representations of S/M sexuality provoke the contested terrain between and among feminisms—indeed, the very kind of contestation within feminism that is obscured within the popular imagination. In this paper, I seek to bring this contestation to the surface by providing a multiplicity of feminist readings of *Twyman* and *Secretary*. Further, I argue that a nuanced reading of these two texts requires a feminism decentered and enriched by the insights of queer theory. Like others, I need queer theory to point out what is wrong with feminism. But I also need feminism to point out what is wrong with feminism itself and with queer theory. I need both feminism and queer theory to tell a more deeply textured story about both the legal and cultural representations of sexuality.

### **The S/M Subject Through a “Feminism After”**

It is just such a feminism—decentered and enriched by the insights of queer theory—that remains an indispensable resource for understanding legal and cultural representations of sexual subjects, specifically, of S/M subjects. In this section, I critically read the Texas Supreme Court case, *Twyman v. Twyman*, and the film *Secretary*, through the lens of multiple feminisms and queer theory. Both the case and the film raise questions about the representation of sexual subjects engaged in S/M sexuality. And both the case and the film animate many feminisms: dominant strands of liberal, dominance, and cultural feminism as well as more marginal strands of sex-

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(at 207). Franke argues that feminists need to return to the terrain of sexuality that they have largely abandoned, and see what insights a gendered analysis of sexuality might produce.

<sup>25</sup> Franke, “Theorizing Yes”, *ibid.* at 203.

positive, queer/postmodern, and redistributive feminisms. Alternative readings—both within and without feminism—are needed to supplement and disrupt, analyze and destabilize dominant feminist readings of both these representations. But, unlike Halley, I need feminism to critique what is wrong with feminism. While I rely on the insights of queer theory in this disruption, I nevertheless need to keep a critical eye on the discourses of gender in analyzing the deployment of sex and sexuality.

### A. Reading and Rereading Twyman

In *Twyman v. Twyman*,<sup>26</sup> a wife sought damages for emotional injuries that she claimed she suffered because her husband induced her to engage in sado-masochistic bondage. According to the plurality opinion of the Texas Supreme Court, which described the bondage as “deviate sexual acts”,<sup>27</sup> the wife was particularly susceptible to emotional harm because she had been raped at knifepoint prior to the marriage. One of the dissenting opinions in the case describes the S/M encounter in more consensual terms. According to Justice Hecht, it involved two or three occasions in which “the couple engaged in what they referred to as ‘light bondage’—tying each other to the bed with neckties during their sexual relations.”<sup>28</sup> The encounters ceased when the wife told her husband that she associated the activities with the trauma of being raped. But the husband subsequently pursued his S/M desires elsewhere and had an affair with another woman who shared his interests. When the wife found out about the affair, the husband said it was her fault and the only way to save their marriage was for her to engage in S/M with him. The couple sought counselling and, on the advice of their therapist, Shelia Twyman tried again but found the activity to be “so painful and humiliating that she could not continue.”<sup>29</sup> Justice Hecht added: “Their last encounter, which did not involve bondage activities, was so rough that she was injured to the point of bleeding”<sup>30</sup>—a point that the other justices virtually ignore. The couple separated. In her petition for divorce, the wife included a general claim for the infliction of emotional distress against her husband. The lower court ordered the husband to pay fifteen thousand dollars for emotional distress.<sup>31</sup> The husband appealed the ruling on the ground that interspousal tort immunity precluded his wife’s recovery of damages for emotional distress. The Texas Court of Appeal held that the

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<sup>26</sup> *Twyman v. Twyman*, 855 S.W.2d 619 (1993) (Tex. Sup. Ct.) [*Twyman* (Sup. Ct.)], appealing from 790 S.W.2d 819 (1990) (Tex. C.A.) [*Twyman* (C.A.)].

<sup>27</sup> *Twyman* (Sup. Ct.), *ibid.* at 620. The trial judge had made a finding that bondage was a “deviate sexual act”. The husband appealed this finding, claiming that there was no evidence supporting the finding of fact. The Court of Appeal dismissed this part of his appeal on procedural grounds—he had not included his “no evidence” contention in his motion for new trial—so it was not preserved and could not be raised on appeal. See *Twyman* (C.A.), *ibid.* This issue was not raised on appeal to the Texas Supreme Court.

<sup>28</sup> *Twyman* (Sup. Ct.), *ibid.* at 636.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.* at 620.

wife could recover for negligent infliction of emotional distress.<sup>32</sup> The husband appealed again.

The plurality of the Texas Supreme Court, written by Justice Cornyn, deployed a gender neutral reading of the case at hand, deftly managing to avoid any discussion of sex, gender, or sexuality (no small feat given the nature of the claim).<sup>33</sup> The court refused to recognize negligent infliction of emotional distress, but did recognize intentional infliction of emotional distress.<sup>34</sup> In adopting the tort, the court accepted the definition as set out in the Restatement (Second) of Torts,<sup>35</sup> with its emphasis on the outrageousness of the conduct.<sup>36</sup> On the question of interspousal immunity, the court noted that it had unanimously abrogated the doctrine in the context of intentional torts in 1977,<sup>37</sup> and ten years later, abrogated it “completely as to any cause of action.”<sup>38</sup> There was, therefore, no legal impediment to bringing the tort claim in a divorce action. The court then set out some guidelines for coordinating a simultaneous divorce and property action with a tort proceeding, particularly to avoid the possibility of double recovery.<sup>39</sup> However, because the trial had proceeded on the basis of negligent rather than intentional infliction of emotional distress, the plurality remanded the issue for retrial.

Two concurring and dissenting opinions—by Chief Justice Phillips<sup>40</sup> and Justice Hecht<sup>41</sup>—would not have extended the tort of intentional infliction of emotional distress to married couples. The Chief Justice emphasized that divorce always

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<sup>32</sup> *Twyman* (C.A.), *supra* note 26.

<sup>33</sup> Justice Cornyn was joined in the plurality by Justices Gonzalez and Hightower.

<sup>34</sup> The Texas Supreme Court in *Boyles v. Kerr*, 855 S.W.2d 593 (1993)—decided after the Court of Appeal ruling in *Twyman*—had refused to recognize a claim for the negligent infliction of emotional distress.

<sup>35</sup> Restatement (Second) of Torts §46 (1965).

<sup>36</sup> The Court stated:

The Restatement elements of intentional infliction of emotional distress are: 1) the defendant acted intentionally or recklessly, 2) the conduct was extreme and outrageous, 3) the actions of the defendant caused the plaintiff emotional distress, and 4) the emotional distress suffered by the plaintiff was severe. According to the Restatement, liability for outrageous conduct should be found “only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community” (*Twyman* (Sup. Ct.), *supra* note 26, citing Restatement, *ibid.*).

<sup>37</sup> *Bounds v. Caudle*, 560 S.W.2d 925 (1977).

<sup>38</sup> *Twyman* (Sup. Ct.), *ibid.* at 624, citing *Price v. Price*, 732 S.W.2d 316 (1987).

<sup>39</sup> *Twyman* (Sup. Ct.), *ibid.* at 624-26. For a discussion of the history of interspousal tort immunity, see Carl Tobias, “Interspousal Tort Immunity in America” (1989) 23 Ga. L. Rev. 359, and “The Imminent Demise of Interspousal Tort Immunity” 60 Mont. L. Rev. 101 (1999). Tobias notes that although interspousal tort immunity had been severely weakened in most states by the late 1980s, several states retained immunity in some form.

<sup>40</sup> *Twyman* (Sup. Ct.), *ibid.* at 626-20.

<sup>41</sup> *Ibid.* at 629-40.

involves some degree of emotional distress and that recognizing this tort would require the courts to draw “virtually impossible distinction between recoverable and disallowed injuries.”<sup>42</sup> Further, it would unduly restrict the court’s discretion of taking fault into account in dividing marital property.<sup>43</sup>

Justice Hecht, concurring and dissenting, was similarly concerned with the applicability of the tort to married spouses.<sup>44</sup> He emphasized that the sexual relationship was among the most intimate aspects of marriage and “[a]ny breach of such an intimate and essential part of marriage may be regarded as outrageous by the aggrieved spouse and will often be the cause of great distress.”<sup>45</sup> In Hecht’s view, many other sensitive aspects of marriage can cause profound disagreement and result in the breakup of the marriage. If these disagreements and distresses become actionable, “tort claims will be commonplace in divorce cases.”<sup>46</sup> Moreover, the inquiry would simply require “too great an intrusion into the marital relationship.”<sup>47</sup>

In a dissenting opinion, Justice Spector<sup>48</sup> would have recognized both torts (negligent and intentional infliction of emotional distress) and allowed the plaintiff to proceed on the theory of negligent infliction. The sexual conduct complained of by the plaintiff is described as “grossly offensive”. Spector framed the conduct in this case, and claims of emotional distress more generally, in terms of the harms that men do to women, observing that most cases of emotional distress are brought by women against men. She thereby connected the recognition of the tort with the struggle for women’s rights, citing authors who have critiqued the gendered nature of the tort law and its marginalization of women’s claims.<sup>49</sup> Spector pronounced a strong indictment

<sup>42</sup> *Ibid.* at 627.

<sup>43</sup> *Ibid.*

<sup>44</sup> Justice Hecht was joined by Justice Enoch.

<sup>45</sup> *Supra* note 26 at 636 [emphasis in original].

<sup>46</sup> *Ibid.* at 637.

<sup>47</sup> *Ibid.* at 637. Hecht J. states that

[t]he inquiry which must be made to determine whether a spouse’s conduct is outrageous entails too great an intrusion into the marital relationship. Although courts are already called upon to consider fault in divorce actions, allowance of tort claims requires a more pervasive inspection of spouses’ private lives than should be permissible. In this case the parties were called to testify in detail and at length about the most private moments of their marriage.

<sup>48</sup> Justice Spector was joined by Justice Dogett. Although she agreed with the plurality in the recognition of the intentional infliction of emotional distress, she would also have recognized the tort of negligent infliction of emotional distress. She was also concerned with the delay in justice to the plaintiff and would have restored the trial court award.

<sup>49</sup> Spector J. writes: “Like the struggle for women’s rights, the movement toward recovery for emotional distress has been long and tortuous” (*Twyman* (Sup. Ct.), *supra* note 26 at 642-43). See Peter A. Bell, “The Bell Tolls: Toward Full Tort Recovery for Psychic Injury” (1984) 36 U. Fla. L. Rev. 333 at 336-40. In the judicial system dominated by men, emotional distress claims have historically been marginalized:

of the plurality's rejection of the claim for negligent infliction of emotional distress: "Today, when the widespread mistreatment of women is being documented throughout the country—for instance in the areas of sexual harassment and domestic violence—a majority of the court takes a step backward and abolishes one way of righting this grievous wrong."<sup>50</sup>

Liberal, dominance, and cultural feminists would more or less agree on their analyses of this case, differing only in emphasis.<sup>51</sup> The story might go something like this: sado-masochism is part of the systemic sexual subordination of women by men, and therefore, the S/M sexual encounter in the marriage should constitute an actionable sexual harm. The plurality of the court was wrong in applying a gender neutral standard that excludes women and their unique experiences of harm, thereby reinforcing the sexual subordination of women by men. Both the Chief Justice and Justice Hecht were wrong in immunizing the private sphere of the family from intervention and thereby failing to recognize the harms women suffer within this sphere and reinforcing the sexual subordination of women by men. Both failed to interrogate the gendered impact of the refusal to recognize this tort, and the extent to which both sexuality and the family are sites of women's subordination. By contrast, the dissenting opinion of Justice Spector would likely be heralded as a feminist victory, in recognizing the unique harms that women suffer at the hands of men, and connecting the harm of emotional distress to the broader issue of violence against women.<sup>52</sup>

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The law of torts values physical security and property more highly than emotional security and human relationships. This apparently gender-neutral hierarchy of values has privileged men, as the traditional owners and managers of property, and has burdened women, to whom the emotional work of maintaining human relationships has commonly been assigned. The law has often failed to compensate women for recurring harms—serious though they may be in the lives of women—for which there is no precise masculine analogue (Martha Chamallas & Linda K. Kerber, "Women, Mothers, and the Law of Fright: A History" (1990) 88 Mich. L. Rev. 814 at 814).

<sup>50</sup> *Twyman* (Sup. Ct.), *ibid.* at 643.

<sup>51</sup> Liberal feminism would highlight the ways in which a gender neutral standard excludes women and their experiences of harm. Radical feminism would highlight the ways in which women's subordination in and through sexual practices are rendered invisible in law's objectivity. Cultural feminism would highlight the exclusion of women's unique experiences of harm from the law, and argue for the need to accommodate these experiences within the law. While the three strands of feminism blend together into a single feminist reading, there is a difference in emphasis: exclusion, subordination, and the need for inclusion, respectively.

For a concise overview of these different feminisms, see Nicola Lacey, "Feminist Legal Theory and the Rights of Women" in Knop, *supra* note 12, 13. See generally, Alison M. Jaggar, *Feminist Politics & Human Nature* (Totowa, N.J.: Rowman & Allanheld, 1983), and Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction* (Boulder, Colo.: Westview Press, 1989).

<sup>52</sup> There has, however, been surprisingly little feminist commentary on *Twyman*. The only reported feminist comment I have been able to find is Mae Quinn, "The Garden Path of *Boyles v. Kerr* and *Twyman v. Twyman*: An Outrageous Response to Victims of Sexual Misconduct" (1995) 4 Tex. J. Women & L. 247, which involves a critique of how cases involving women's sexually related

This is a feminist reading. But, it is not the only feminist reading to which the case could be subject. Socialist or materialist feminism, for example, would read *Twyman* from the point of view of gender oppression, but it would deploy a very different analytic framework, with potentially very different conclusions.<sup>53</sup> It would retain a focus on the family as a site for the production and operation of gender as an axis of power. It might focus its analysis on the operation of dominant familial ideologies and the ways in which those ideologies shape and reinforce deeply gendered assumptions, roles, and responsibilities within the family. This reading might highlight the ways in which the opinions of Hecht and Phillips JJ. were shaped by the ideologies of affective privacy. A socialist feminism might consider the distributional effects of the case in terms of the allocation of resources on family breakdown. It might evaluate the decision in *Twyman* from the broader context of the transformations in the legal regulation of the family. How does the effort to reintroduce fault operate within the context of the fundamental restructuring of family law from fault to failure? To what extent might the reintroduction of fault serve to undermine the efforts to recast family breakdown as primarily a question of restructuring financial and parenting relationships? Might the reintroduction of fault—particularly in the context of sexual harm—undermine family law’s focus on equitable redistribution by refocusing attention on moral culpability? And in what ways might the case, like family law more generally, be operating to sustain the privatization of economic support for individuals without market income?

Sex radical feminism would also read *Twyman* very differently.<sup>54</sup> It would dispute the normative and analytic assumption of dominance feminism that S/M sexuality is part of the systemic sexual subordination of women by men. Indeed, sex radical feminism rejects the very premises of dominance feminism that sexuality constitutes the primary site of women’s subordination, insisting that sex and sexuality are a far more ambivalent site, producing multiplicities of pleasures and dangers.<sup>55</sup> Similarly, it would not frame S/M sex as inherently harmful to women, but as a potentially pleasurable and subversive sexual practice. A sex radical feminist reading would

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emotional harms are being dismissed. Quinn does not analyze the sexual activity in *Twyman*, but simply proceeds on the assumption that it constitutes an emotional harm.

<sup>53</sup> On socialist feminism, see generally Michèle Barrett, *Women’s Oppression Today: The Marxist/Feminist Encounter* (London: Verso, 1988); Zillah Eisenstein, *Capitalist Patriarchy and the Case for Socialist Feminism* (New York: Monthly Review Press, 1979). On socialist feminism in law, see Shelley A.M. Gavigan, “Paradise Lost, Paradox Revisited: The Implications of Familial Ideology for Feminist, Lesbian and Gay Engagement to Law” (1993) 31 Osgoode Hall L.J. 589; Susan Boyd, “Some Postmodern Challenge to Feminist Analyses of Law, Family and State: Ideology and Discourse in Child Custody Law” (1991) 10 Can. J. Fam. L. 79; Susan Boyd, “(Re)placing the State: Family, Law and Oppression” (1994) 9 C.J.L.S. 39. On materialist feminism, see Rosemary Hennessy & Chrys Ingraham, eds., *Materialist Feminism: A Reader in Class, Difference and Women’s Lives* (New York: Routledge, 1997); Rosemary Hennessy, *Materialist Feminism and the Politics of Discourse* (New York: Routledge, 1992); Donna Landry & Gerald Maclean, *Materialist Feminisms* (Cambridge: Blackwell, 1993).

<sup>54</sup> On sex radical feminism, see *supra* note 5.

<sup>55</sup> See Vance, *Pleasure and Danger*, *supra* note 6.

question the liberatory potential of recognizing S/M as a potentially actionable sexual harm, arguing instead that increased surveillance and regulation would reiterate a conservative sexual morality that has been highly problematic for women. Such a feminist reading would dispute the gendered assumptions of the dominant feminist narrative that women need to be protected from aggressive, male sexuality, arguing that such a protectionist approach simply reconstitutes women as weak, hapless, powerless victims. Sex radical feminism would insist on women's sexual agency and their ability to negotiate the treacherous terrain of sexuality, consensually seeking pleasure and avoiding danger. But, this feminist reading would not celebrate *Twyman* as a feminist victory, since the opinions each demonstrate a strong distaste towards alternative sexual practices, thereby reiterating the same underlying conservative sexual morality. Sex radical feminism would reveal the ambivalent discourses of sex and sexuality underlying the decision.

A queer theory/postmodern feminism, informed by the work of Judith Butler, would provide yet another reading of *Twyman*.<sup>56</sup> It would consider how the claims of harm and the deployment of legal discourses reiterate the very foundational categories of man/women, male/female that feminism needs to disrupt. Feminist claims of harm to women help to produce the very bodies, subjectivities, and identities that experience this harm.<sup>57</sup> Such a reading of *Twyman* would be concerned with the extent to which a legal recognition of emotional distress for a sexual harm associated with a consensual practice would discursively produce women who do suffer these harms, that is, it would reiterate woman as a victim of men's sexual subordination, as a subject who lacks sexual agency and who experiences psychic trauma from sexual engagements. This feminist reading would be concerned that this recognition of women's sexual injury by men would operate to further instantiate a heterosexual matrix that produces and polices sexed and gendered bodies. Such a reading would be centrally concerned with the discursive closures produced by these reiterations of gender.

Both sex radical feminism and queer theory feminism would have something to say about the fact scenario that gave rise to the claim for emotional distress. The "facts" of the sexual encounter are murky, told to us only through the court's narrative of "deviate sexual practices". In a footnote, the plurality tells us that Sheila Twyman testified that William Twyman "attempted to emotionally coerce [her] in 'bondage' on an ongoing basis ..."<sup>58</sup> A slightly different account is provided in Hecht J.'s opinion,

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<sup>56</sup> On queer theory feminism, see Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1989); Judith Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* (New York: Routledge, 1993); Judith Butler, *Undoing Gender* (Boca Raton, Fla.: Routledge, 2004).

<sup>57</sup> See Halley, "Taking a Break", *supra* note 12; Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995).

<sup>58</sup> *Twyman* (Sup. Ct.), *supra* note 26 at 621, n. 1.



describing the sexual encounters as two or three occasions of “light bondage”.<sup>59</sup> Justice Hecht is again the only one to point out that the couple’s last sexual encounter did not involve bondage, but “was so rough that she was injured to the point of bleeding.”<sup>60</sup> Hecht J. also tells us a little more about William’s behavior attempting to coerce Sheila into the sex “by continually asserting that their marriage could be saved only by [Sheila] participating with him in his practices of ‘bondage.’”<sup>61</sup> Only the Court of Appeal decision offers greater detail about the nature of William’s course of conduct:

Throughout this time, William repeatedly indicated to Sheila that there was something wrong with her for not engaging in the activities; told her that when he was out of town he visited stores selling bondage paraphernalia and that “women in their mink coats and men in their three piece business suits purchased these items”; told her that he visited “sex parlors” and that there had been other women besides his current girlfriend; described his sexual activity with his girlfriend and made derogatory comparisons of Sheila’s sexual abilities with those of his girlfriend; and told Sheila that they would have a marriage if she could do bondage—that he could not see a future for them if she did not.<sup>62</sup>

We know little else of the sexual dynamic and erotic desires of this couple, aside from the fact that William’s S/M desires did not wane, but ultimately, lead him to pursue his fantasies outside the marriage.

While the dominant feminist narrative, with its radical feminist influence, has no difficulty condemning the sexual encounter as abusive and oppressive, sex radical and queer theory feminism would have counter narratives to tell. Sex radical feminism, in keeping with its insistence on sex and sexuality as ambivalent, producing the possibilities of pleasure and danger, would focus attention on the question of consent. While the absence of consent could justify legal intervention, if the sexual encounters appeared to be consensual—if Sheila Twyman agreed to participate in the bondage—then the fact that she did not enjoy the sex encounter would not be sufficient to make it actionable. Sex radical feminism would emphasize that although consensual S/M may not be to everyone’s erotic taste, it should be recognized as a legitimate sexual choice.

Sex radical feminism might also attempt to go behind the court’s official description of the facts as “deviate sexual practices” and explore the other parts of the factual story that are obscured in this single-minded focus on the bondage. What of the last sexual encounter that did not involve bondage but did result in physical injury? Only Justices Hecht and Spector even noticed this encounter. Rather, the focus of the rest of the court is on the “deviate sexual practices”—that is, the bondage. A

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<sup>59</sup> *Ibid.* at 636. See text accompanying note 28. For more information regarding the facts of the case, see text accompanying notes 27-30.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.* at 621, n. 1.

<sup>62</sup> *Tywman (C.A.)*, *supra* note 26 at 820.

sexual encounter that actually caused bodily harm is ignored in the face of a sexual encounter involving bondage that caused psychic harm. Sex radical feminism might not necessarily agree that the former should be any more actionable than the latter (since both appeared to involve consent). It would, however, highlight the fact that the court is more concerned with the deviate sexual practice/psychic injury than it is with intercourse causing bodily harm.

Sex radical feminism might also try to highlight the fact that the court paid little attention to the facts surrounding the S/M encounters. With the exception of Justice Hecht, the court was single-mindedly focused on the bondage, rather than on William's course of conduct in which he tried to convince Sheila to engage in bondage. William said some nasty things to his wife; he tried to make her feel bad—bad enough to try the sex again. Again, sex radical feminism might not think that this course of conduct should necessarily be actionable. But, it might illustrate how some facts are obscured and others highlighted in a way that demonstrates the court's distaste for alternative sexual practices.<sup>63</sup>

Queer theory feminism would similarly be interested in the multiplicities and ambivalences of sexuality, though its focus would not be on liberal conceptions of consent. Queer theory feminism would be interested in the potential for gender to be performed subversively. It would turn its critical eye to the ways in which S/M practices may disrupt dominant iterations and performativities of gender, seeking in turn to undermine the gender/sex/heterosexuality triad. Alongside sex radical feminism, it might explore the ways in which much S/M practice and imagery inverts the male subject/female object narrative of radical feminism. Women in S/M often perform sexually powerful—both self-possessed and other controlling—roles; they are the dominatrices, men are their slaves. But, while this might be enough to affirm the liberatory potential for sex radical feminism, queer theory feminism would remain skeptical about such a simple reversal that remains firmly anchored within a heterosexual matrix. It would also be skeptical about such stable and coherent subject positions; either subject or object, self-directed or other controlled, seeking out instead the ambiguities of desire and the instability of identity.

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<sup>63</sup> The story of emotional coercion tells a rather more complicated picture of the couple's dynamic and of Sheila's injury. This picture would seem quite relevant in the question of the intentional and/or negligent infliction of emotional distress. Indeed, while sex radical feminists might remain wary of making any consensual sex actionable, attention to these facts may actually complicate the notion of consent informing this sex radical position. At a minimum, attention to this course of conduct rather than simply to the incidents of bondage, could render the analysis of Sheila's actual injury and whether it should be actionable more nuanced and complex. It could make the discussion between and among feminists of different stripes more interesting as well. Liberal, radical, and cultural feminists could themselves be more interested in the overall course of conduct and the problematization of consent, instead of simply focusing—as the court did—on the “deviate sexual practice”.

Further, the S/M encounter in *Twyman* was *not* one in which the gender roles were reversed, at least not clearly so. Sheila agreed to participate, at the encouragement of her husband and ultimately, did not find the experience to be redemptive. While we know little about her sexual psychic life, she is not the S/M chic dominatrix of popular culture. This is no simple, celebratory reversal of gendered narratives. Nor is it one in which we even get to delve into the mysteries of female masochism, à la Jessica Benjamin.<sup>64</sup> Unlike *Secretary*, where Lee Holloway finds pleasure and redemption in her own masochism, Sheila Twyman finds no transcendence in her brief encounter with bondage. She is neither dominatrix nor slave, neither top nor bottom. Her experience is a complicated one—consensual, but disturbing for reasons that we cannot fully access. The ambiguities dissolve, though, in the face of the story that Sheila subsequently tells; a story of being “forced” into S/M against her will; a story of adding injury to her psychic trauma of sexual violence; a story of a husband’s deviant and uncontrollable sexual practices ultimately destroying their marriage. She is no longer a sexual agent, but a sexual victim; the S/M encounter no longer a complicated mix of erotic desire and abjection, but a coercive humiliation, made worse by her husband’s subsequent infidelity. A queer theory feminism might seek to reveal these instabilities and ambiguities in the constitution of subjectivity and in the subject’s effort to repudiate them through a victim narrative.

Together, sex radical, socialist, and queer theory feminist readings would dispute and disrupt the dominant feminist reading of *Twyman*. But each of these readings retains a focus on gender as an axis of power, as “a primary way of signifying relationships of power”. Each of these readings suggests that the material and discursive implications of the case must include an analysis of gender and its complex intersections with the discourses of sex and sexuality.

While these alternative feminist readings produce important insights into the operation of sexuality and its legal regulation in *Twyman*, queer theory can further disrupt and supplement these insights with its own readings of the case, readings that would not highlight questions of gender.<sup>65</sup> Queer theory has many different thematics and strands of critique.<sup>66</sup> It takes as its point of departure a critique of the essentialist notions of identity that informed gay and lesbian studies. Queer theory is critical of

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<sup>64</sup> Jessica Benjamin, *The Bonds of Love: Psychoanalysis, Feminism, and the Problem of Domination* (New York: Pantheon, 1988).

<sup>65</sup> Halley, *supra* note 12, provides two different readings of *Twyman* from a self-described queer theory position. One reading is drawn from Nietzsche’s slave morality in the *Genealogy of Morals* (Friedrich Wilhelm Nietzsche, *Genealogy of Morals* (Edinburgh: T.N. Foulis, 1910)) and the second from Foucault’s *Theory of Sexuality*, Volume I (Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction*, trans. by Robert Hurley (New York: Pantheon, 1978)).

<sup>66</sup> For a general discussion of queer theory, see Nikki Sullivan, *A Critical Introduction to Queer Theory* (Edinburgh: Edinburgh University Press, 2003); Annamarie Jagose, *Queer Theory: An Introduction* (New York: New York University Press, 1996); William B. Turner, *A Genealogy of Queer Theory* (Philadelphia: Temple University Press, 2000).

the ways in which gay and lesbian studies both presumed and reified gay and lesbian identity. It rejects this essential notion of identity for failing to critically evaluate the ways in which identity is politically and historically constituted, and for reinforcing the very dichotomy between “homosexual” and “heterosexual” that produces the identity and the subordinate position of those on the homosexual side of the dichotomy. Queer theory then seeks to shift the analysis from identity politics to the representational and psychoanalytic processes that constitute sexual identities. In its “anti-identitarian” impulse, it insists on the instabilities of these identities. It is particularly interested in the representational processes of hetero-normativity, the ways in which the homosexual/heterosexual dichotomy is produced, and the discursive practices that produce marginal sexual subjects. Revealing its strong debt to Foucault, queer theory might consider the disciplinary implications of the surveillance of sexuality for subjects whose bodies are marked by “other” sexualities: S/M subjects, queer subjects, transgendered subjects, sex worker subjects, and others whose bodies are erotically charged. It would seek to reveal the ways in which these subjects are produced as deviant through a range of discursive and institutional practices. It is interested in the processes of normalization and in the possibilities of disruption and subversion. Notwithstanding its deconstructive mode, its normativity is avowedly pro-sexual. Queer theory seeks to liberate desire, sex, and sexuality from its regulatory regime of the hetero-normative, to celebrate shame and abjection, and to affirm the multiplicity of erotic desires, practices, and identifications.

Queer theory could read *Twyman* as a performance of heterosexuality—with both Sheila and the court policing the boundaries of stable heterosexual sexuality. The S/M encounter in *Twyman* produced a disruption in hetero-normativity. It was a moment of sexual excess and the performance of deviant desire that fell outside the bounds of normal marital desire. It was a disruption that both Sheila and the court subsequently sought to discipline by marking William as deviant fetishist. Sheila disavows her participation in the sexual practice by telling a story of “being forced” into it; a story of nonconsensuality that helps reconstitute Sheila as victim rather than deviant. She seeks to distance herself from sexual perversity by deploying the mechanism of legal regulation. Her resort to law is an attempt to recuperate her own sexual identity as normalized by placing blame, in the form of legal retribution, on her husband.

The court in *Twyman* can similarly be seen as policing the boundaries of hetero-normativity. The S/M encounter was marked by virtually all of the judges—including those who would not abrogate the interspousal immunity—as deviant, as an aberration of normal heterosexual desire. Each cast Sheila as the victim of her husband’s fetishistic desires. Those justices who would allow the claim for intentional infliction, negligent infliction of emotional distress, or both, affirmed Sheila’s status as victim and her desire for legal retribution, and in turn sexual recuperation. And in so doing, those judges reiterate the “normal” bounds of sexuality within the marital relationship. On the other hand, those judges who would not abrogate the interspousal immunity and thereby not allow the claim for emotional distress, could also be read as engaging in a normalization project. These judges were concerned with undue intervention in the private sphere. Their discourse operated to reiterate marriage as

naturally located within this sphere, as a sacred space for the exploration of love and intimacy. Heterosexual marriage is normalized as against other intimate configurations.

These queer readings focus on the hetero-normativity of marriage but, unlike a feminist reading of hetero-normativity, they have nothing to do specifically with gender as an axis of power.<sup>67</sup> Rather, these readings are more interested in sex and sexuality as *an* (if not *the*) axis of power, the role of marriage in producing the hetero-normative matrix, and the hetero/homo binary. The story of Sheila is not, here, a story about gender oppression. Nor is the story about the court's normalization of marriage. These queer theory readings of *Twyman* can provide a part of the story that feminism with its focus on gender simply cannot tell. It may actually be helpful to consider the ways in which the case can be read as a critique of hetero-normativity that really has nothing to do with gender. This non-feminist reading could be incorporated. But, in keeping with the idea of travelling beyond feminism and back again, it is a reading that could also be further interrogated. In what ways might the non-feminist reading be reread through a gendered lens? Might there be a way in which the queer readings could be supplemented and enhanced through attention to gender as an axis of power? For example, are there particular ways in which Sheila's deployment of law as a mode of self-recuperation was gendered? We might argue that her deployment was only successful because of her gendered subject position. While the hetero-normativity of marriage was normalized (the queer theory reading), it is not clear that the same result would have been so easily achieved if the roles were reversed—if Sheila was the sexual "aggressor" and William the sexual "victim". It might well be that Sheila could only "win" (however partially) because of the gendered discourses and subjects of law. The law recognizes women as victims; as sexual subjects women are seen as the victims of male sexual violence. In this case, Sheila was able to present herself as just such a victim, suffering a sexual injury at the hands of a male sexual subject. Arguably, then, the very imagery that she was able to invoke was dependent on a deeply gendered text of law.

This is but one example of ways in which a queer reading that feminism cannot see can be usefully supplemented by a feminism reading that queer theory does not or cannot see. Queer theory brings to the table the idea of Sheila as a normalizing agent, seeking retribution from her husband; an idea that might be difficult, if not impossible, to achieve through a lens that focuses primarily on gender. But, by the same token, this non-gendered reading of queer theory may be unable to get at the

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<sup>67</sup> Feminist theory is certainly capable of producing a critique of hetero-normativity. See *e.g.* the works cited to Judith Butler, *supra* note 56; Rosemary Hennessy, *Profit and Pleasure: Sexual Identities in Late Capitalism* (New York: Routledge, 2000) for two critiques of hetero-normativity from two very different feminist theoretical perspectives. But, what distinguishes non-feminist queer theory from feminist queer theory is the extent to which the critique of hetero-normativity disavows gender as a relevant axis of power. Feminism's critique of hetero-normativity within the spheres of family and sexuality is intricately (if intersectionally) connected to gender. Queer theory's is not.

ways in which gender makes a difference in the very story that it seeks to tell. A feminist rereading, then, supplements rather than disavows a non-feminist reading. Both feminist and non-feminist come together in a theoretically awkward yet productive analysis.

### **B. Reading and Rereading Secretary**

These multiple feminist and queer readings could similarly provide a number of different readings of the film *Secretary* that would be considerably more complex and nuanced than the anti-feminism versus celebratory sexuality told in the dominant readings. No doubt, radical and cultural feminists would tell a story about the film and its protagonist consistent with their critique of sado-masochism. It might go something like this: Lee is an emotionally abused young woman (she comes from a dysfunctional family, with an alcoholic father), who first learns to abuse herself through self-mutilation, and then learns to redirect her abuse outward, by having someone else do it for her. It is a story of abuse, self and other. And it is a story of the conventional exercise of heterosexual power and desire; a rescue fantasy in which the young woman is saved only to be abused again by her saviour (to say nothing of the sexual objectification of women for audience consumption). It is a film that celebrates the eroticizing of dominance and the submission of women, made all the worse by its tongue-in-cheek irony and its fantastical settings. This feminist narrative might also comment on the plot twist, in which Lee and Gray settle down into wedded, domestic bliss. The storybook ending is simply the story of the sexual subordination of all women—sexual dominance and submission within heterosexual marriage.

Again, although this is a feminist reading, it is not the only possible feminist reading of the film. Sex radical feminism would dispute the idea of S/M (or B/D) sex as inherently harmful to women, insisting instead that it is at least potentially a pleasurable and subversive sexual practice. It would not condemn Lee's masochism as a manifestation of abuse and domination, but rather, would attempt to create space for the articulation of female desire in all its complexity. Sex radical feminism, recognizing sex and sexuality as ambivalent, would focus on the consensuality of the sex between Lee and Grey. It would be concerned if Grey was sexually harassing Lee, if the encounters were not marked by the signs of mutuality in the performance of discipline. Sex radical feminism would condemn the encounters if it found evidence of non-consensuality. But, the story of *Secretary* appears to be one of mutual desire, of Lee actively seeking out Grey's discipline and abuse. Sex radical feminism would focus on and celebrate Lee's sexual agency—*her* choice to pursue *her* desire.

It is a reading that would appear to have considerable resonance with the authorial intention of the writer. In the opening words of her introduction to the screenplay, Erin Cressida Wilson explicitly frames her text in feminist terms: "Does being submissive between the sheets make you less of a feminist? In order to have equal rights, must you

be dominant in the sack?”<sup>68</sup> Wilson recounts her personal narrative, a narrative of becoming feminist, and of becoming submissive, and of the received wisdom that the twain shall not meet. She describes the process of writing the screenplay for *Secretary* as one in which she decided that she

could not “in all honesty” write a screenplay about a woman who overcomes her masochism. I didn’t want to create yet another drama about a woman recovering from her problems or perversions. Then I thought: What if this were a coming-out film for a submissive? What if she were to stop fighting it—and instead—she embraced it, defined it and then became empowered?<sup>69</sup>

Wilson concludes her introduction with the following unflinching words: “We are not beginning to see the sexiest, strongest, and most empowering part of being submissive: that it can be an expression of strength of character to bow down and surrender to love and passion. This is my idea of feminism.”<sup>70</sup> Wilson’s intention in writing *Secretary* was to tell an explicitly feminist story about the power of the submissive; a feminist story consistent with sex radical feminism’s emphasis on the multiplicities of women’s sexual desires and pleasures.

Queer theory feminism would tell a different story of *Secretary*. It would interrogate the gender performances in the film, and explore the extent to which the B/D practices and the narrative more generally disrupts or reiterates dominant performativities of gender and heterosexuality. It would consider the ambivalent role of female masochism in the performance of gender. In performing the role of the submissive secretary, is Lee simply reproducing the dominant iterations of heterosexuality, or does her over-the-top caricature operate more subversively? What about the fantastical nature of the many of the settings? To what extent do the scenes and cinematic technique that appear to blur fantasy and reality contribute to this subversion? From the richly textured colours and the surreal nature of the office to the scenes of Lee crawling on all fours with an envelope in her mouth, or awkwardly and elegantly performing office work with her arms bound to a pole behind her neck, the viewer is often left wondering whether the scene is “real” or exists only in the imagination and fantasy of the characters. Does Lee’s performance, against a backdrop of the surreal settings, bring the artificiality of gender roles and heterosexual desire into sharper relief? Queer theory feminism would also consider the ways in which some of the more subversive elements were contained within the normalizing discourses of the film. Lee’s masochism, and the couple’s desires were reigned in through the tropes of heterosexual domestication: romantic love, marriage, and suburban domesticity. While Lee’s performance may disrupt dominant instantiations of gender in her sexual agency and parodic pursuit of her desire, she is, at the end of the day, domesticated through the discourses of marriage and “familialism”, discourses that in turn sustain dominant gender norms. She may have unusual desires,

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<sup>68</sup> Wilson, *supra* note 2 at iii (“Introduction”).

<sup>69</sup> *Ibid.* at vi.

<sup>70</sup> *Ibid.* at vii.

but these desires are now legitimated and contained within a hetero-normative world. The disruptive gender performance is thus contained to the private world of heterosexual desire, which in turn reproduces the very categories of man/woman that feminism needs to destabilize.

A queer theory reading of *Secretary* would share with queer theory feminism a concern for subversion and normalization; with the ways in which sexual excess and desire are domesticated within marital and suburban spaces. But, the male/female distinction of such interest to feminism would be abandoned in favour of an exploration of the ways in which the film operates to disrupt or normalize the heterosexual/homosexual dichotomy. Queer theory is particularly indebted to the work of Michel Foucault. One reading of *Secretary* might borrow from his theories of sexuality and normalization as effects of power. For example, there is a kind of paradoxical reversal of Foucault's psychiatrization of perversity at work in the film that nonetheless works toward normalization. Foucault's idea was of the medical production of knowledge through which the fetishist was constituted and against which others were constituted as normal by avoiding the desires marked as deviant.<sup>71</sup> But, in *Secretary*, the S/M, B/D subject—long marked as the deviant—is reconstituted as normal, or at least, as no less normal than other subjects around it. Lee's deviance—for which she was psychiatrically treated—was one of self-mutilation. But, under Grey's tutelage, her masochism finds an appropriate outlet in dominance and submission. The self-mutilating subject is fetishized and marked as deviant. But, the masochist subject is reconstituted. Lee and Grey fall in love, get married, and move to the suburbs, where Lee is transformed into the stay-at-home housewife. From the outside, their lives merge into the undifferentiated mass of idealized, suburbanized spaces. As one film critic observed: "What's so appealing about 'Secretary' is, how, well, normal these people are."<sup>72</sup>

This queer theory reading would consider the domestication of their sexual desire. In a pivotal scene—the sex scene in which the couple “consummates” their relationship—Grey and Lee have sex in what can only be described as a tender, romantic, and missionary manner. Sexual excess is, at this moment, contained within romantic love. While the film subsequently shows the couple pursuing their more edgy obsessions—Grey having sex with Lee while she is tied to a tree—their deviance has now been reframed within loving, hetero-normative parameters: it is monogamous, romantic, heterosexual, marital, and noncommercial. The sex is edgy but not too edgy.

A second, and rather different, trajectory of queer theory involves the affirmation of abjection and shame, found, for example, in the work of Leo Bersani and Michael

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<sup>71</sup> Foucault, *supra* note 65.

<sup>72</sup> Manohla Dargis, “In Buoyant Secretary, Romance for Consenting Adults” *Los Angeles Times* (20 September 2002).



Warner.<sup>73</sup> In Bersani's work, sex involves an annihilation of the self, an undoing of controlled selfhood. He writes of the "sexual ... jouissance of exploded limits",<sup>74</sup> in the ways "that sexual pleasure [which] occurs whenever a certain threshold of intensity is reached, when the organization of the self is momentarily disturbed by sensations or affective processes somehow 'beyond' those connected with psychic organization."<sup>75</sup> A reading of *Secretary* along these lines might, on the one hand, applaud the film's embrace of shame as a powerful element of sexual desire. It might consider the ways in which the erotic obsession and performance pushed at the outer borders of self and other, and the ways in which their sexual encounters hinted at this "jouissance of exploded limits" and the "annihilation of the self". Lee and Grey's sexual encounters were characterized by an "out-of-controlness", a desire that extended beyond the boundaries of the rational self. In a powerful scene, Grey reaches sexual ecstasy as he spans Lee at his desk, there is a sense that he has simply lost control over the excess of his desire. This reading of the film includes an exploration of the psychic sexual subjects of the film; not only on Lee's masochism (of such interest to feminists), but also on Grey's tortured self. Grey seeks through much of the film to control his desires, through an alternative physicality of running and sit-ups. He "knows" that he must control his deviant desires, but he proves unable to do so in the face of Lee's seductions.

There is a slightly different element of the annihilation of the self in Lee's transformation from self-mutilator to slave. Self-mutilators are sometimes said to be marking the borders between self and other, between inside and out by violating them; they are marking and asserting the border of the self through pain; it is an assertion of self-control. It may be an acting out of feelings of shame or a way of stopping a dissociative episode. While we have little access to the inner workings of Lee's psychic world that leads her to cut (any and all of the above are feasible explanations), we witness her transformation as she learns to have her psychic desires met through her sexual encounters with Grey. She can embrace shame as a desirable state. She can experience the boundary between self and other through its violation. She can experience her self, its annihilation, and its reconstitution through pain and humiliation.

Each of these queer theory readings adds a layer of complexity and insight to the film. None is specifically feminist nor deploys the lens of gender as an axis of power. Indeed, some of them may be precluded by a focus on gender as a site of the asymmetrical distribution of power. For example, a reading of *Secretary* that is primarily concerned with a gendered reading—either (a) in radical feminism's

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<sup>73</sup> Leo Bersani, "Is the Rectum a Grave?" in Douglas Crimp, ed., *AIDS: Cultural Analysis, Cultural Activism* (Cambridge, Mass.: MIT Press, 1988) 197; see also Leo Bersani, *Homos* (Cambridge, Mass.: Harvard University Press, 1995); Michael Warner, *The Trouble with Normal: Sex, Politics and the Ethics of Queer Life* (New York: Free Press, 1999).

<sup>74</sup> Bersani, "Is the Rectum a Grave?", *ibid.* at 217.

<sup>75</sup> *Ibid.*

language, how the film reinforces the sexual subordination of women or (b) in queer feminism's language, how the subjects are positioned as gendered and how the performances reiterate dominant instantiations of gender—may simply be unable to imagine a reading in which gender is irrelevant. It would be unable to imagine a reading in which Lee's self-mutilation was not a product of gender or in which her masochism was not analyzed through the lens of gendered power.

This is Janet Halley's point. Taking a break from feminism may be extremely productive by bringing into view things that would otherwise be invisible. She is right. But, coming full circle, I also believe that the insights from beyond feminism can be brought back to feminism, that feminism can be enriched by insights from beyond its own imaginative borders. A feminist reading of *Secretary* can be a better reading if it is prepared to acknowledge its own disciplinary limits and its interpretative partiality. A feminist reading is simply not the only reading, nor should it have to establish its exclusivity in order to validate its legitimacy. In the sphere of sexuality, queer theory is an important supplement to feminism's focus on gender.

At the same time, these queer readings of *Secretary* as normalization or sexual abjection can be supplemented—indeed, in some respects only make sense when supplemented—by a gendered analysis. Part of what makes the story in *Secretary* work as normalization is the containment of Lee within domesticated “suburbanry”, an idea that owes much to feminism's analysis of the discourses of feminized domesticity. And part of what makes the story in *Secretary* work as an affirmation of sexual abjection are the highly eroticized and gendered roles of S/M, B/D sexuality. The accoutrements of S/M, B/D sexuality, and the roles it assigns in its erotic performances, only make sense in, and through, highly gendered (but sometimes flipping) identities. In other words, Lee's high heels are not just happenstance. They are part of a gendered performance from which S/M sexuality draws. The queer readings of *Secretary*, then, only work in conjunction with feminism's insights into the workings of gender. While gender may have been bracketed in the initial readings, it has not been sidelined entirely. Gendered assumptions operate to produce the very meaning that queer theory seeks to reveal.

It is also worth returning for a moment to the words of Erin Cressida Wilson. For Wilson, *Secretary* is a feminist text. It was an attempt to challenge the orthodox feminism and its dismissal of women's multivalent desires;<sup>76</sup> an attempt to challenge the extent to which feminism had become divorced from an exploration of these

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<sup>76</sup> For example, Wilson writes of her experience at college in the 1980s when being a lesbian feminist was all the rage. “I didn't want to be on top. I didn't hate men. I wasn't a lesbian. I loved naughty and dominant boys. And at the same time, I was no pushover. I was highly motivated in school, and I loved to give it up in bed. What did this make me? Was this behavior antithetical to my behavior as a studious young woman? I found it a shame that feminism seemed to be dictating what I was allowed to desire” (*supra* note 2 at iii).

desires, particularly if they deviated from the feminist norm.<sup>77</sup> It was an affirmation of sexual submission as feminist. Moreover, Wilson notes that in her early years as playwright, she discovered a theatrical scene that was highly conservative and compartmentalized: “It seemed that it was OK to write about the female experience, but only if the message was feminist. In fact, many of the highly sexed dramas were reserved for homosexuals.”<sup>78</sup> According to Wilson, “[t]here was some misconception that if you were a woman, your work was poetic and soft. Either that, or it was about how ‘so-and-so’ did you wrong. It seemed that if you were a real woman, you only liked your sex gentle and loving.”<sup>79</sup> Wilson set out to challenge these orthodoxies, including the divisions emerging within the theatrical scene in which feminists explored the oppression of women, and gay men explored sex. Without seeking to privilege the authorial intentions as the true reading of the text, it does seem to be worth acknowledging that *Secretary* was a challenge to the very dichotomy between feminism and queer theory, gender and sexuality; a challenge that came from within the discourses of feminism. A queer theory reading alone might miss or dismiss the significance of this challenge coming from within feminism. Yet, its feminist frame is part of the cultural milieu from which the text emerged, and which has produced meaning for the text. Paradoxically, it is the very cultural milieu that produces the text as anti- or post-feminist in the popular imagination. The feminism that *Secretary* challenges is so pervasive that the film is then read by many as anti/post feminist. A queer theory reading might simply contribute to this anti/post feminist reading, rather than be able to simultaneously point out its paradoxical nature. Once again, it is possible to see how gendered assumptions produce the very meanings the film explores and challenges. And once again, it is possible to see how our analyses of cultural texts might be significantly enhanced by attention to gender and sexuality, feminism and queer theory.

This is my point. We need to develop analyses of the complex and nuanced interstices of gender and sexuality, of feminism and queer theory. Judith Butler has argued that it may be that “the long run” has arrived, that it may be time “for feminism to offer a critique of gender hierarchy that might be incorporated into a radical theory of sex, and for radical sexual theory to challenge and enrich feminism.”<sup>80</sup> Indeed, as Butler has suggested, it may be time to worry less about

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<sup>77</sup> Wilson describes her evolution toward accepting the power and pleasure of submission: “To be a strong woman, I would not succumb to this notion that I had to be aggressive, angry, blaming, and politically correct. It seemed to me that there were necessary aspects of being a woman that feminism rejected. It was in the writing of *Secretary* that I began to define what I had been writing and living for fifteen years” (*ibid.* at iv).

<sup>78</sup> *Ibid.* at iii.

<sup>79</sup> *Ibid.*

<sup>80</sup> Butler, “Against Proper Objects”, *supra* note 8 at 18. Butler is paraphrasing Gayle Rubin’s observation in “Thinking Sex” that “[i]n the long run, feminism’s critique of gender hierarchy must be incorporated into a radical theory of sex, and the critique of sexual oppression should enrich

disciplining the boundaries between feminist and queer theory and their appropriate object of study (gender and sexuality respectively), and to “encourage the kinds of conversations that resist the urge to stake territorial claims through the reduction or caricature of the positions from which they are differentiated.”<sup>81</sup> She encourages, instead, “a kind of intellectual trespass which values the expansive possibilities of such confrontations over the retreat into intellectual territory.”<sup>82</sup>

My analysis of both *Twyman* and *Secretary*, while providing a range of alternative feminist and queer readings, has largely proceeded along disciplinary boundaries that Butler suggests that we abandon, or at least, not reify. I have structured my discussion along the lines of providing distinctively feminist and distinctively non feminist readings. Feminist readings focus on gender. Non-feminist readings do not. Pushing the analysis further along the lines recommended by Butler, it may then be time to worry less about intellectual territory, and more about intellectual trespass.

### Conclusion: Disrupting and Reinvigorating Feminism

Feminism after the critique of feminism has its work cut out for it. In the area of sexuality, it must struggle to displace the dominance of dominance feminism in the popular imagination, and to carve out for itself a role in the analysis of sex and sexuality beyond the siren call of negativity and danger. As the analysis of *Twyman* and *Secretary* has attempted to illustrate, feminism can produce a multiplicity of readings and insights into the representation of sex, sexuality, and sexual subjects in general, and S/M subjects in particular; readings that do move beyond sexual negativity, without collapsing into the sexual libertine. In these post-feminist times, when the language of feminism is suspect, feminism must find ways to tap back into cultural power lines; it must find a way to speak that is not reminiscent of 1970s, or 80s, or even 90s feminist slogans—even when some of those slogans hold true, they simply no longer have cultural resonance. Feminism, in the popular imagination, has become a caricature of itself. And the intellectual drift from feminist critique has done little to reverse the tides.

Feminism needs a makeover. It needs to be disrupted, reinvigorated, and repackaged. While it has been the critique of feminism that has contributed to its current stasis, it may be that feminism needs more critique, when critique is understood as unrelenting interrogation of what lies beneath. Wendy Brown and Janet Halley have argued for the politically invigorating potential of critique:

Critique offers possibilities of analyzing existing discourses of power to understand how subjects are fabricated or positioned by them, what powers they secure (and disguise or veil), what assumptions they naturalize, what

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feminism.” But, it was part of an argument that in the short run, “[a]n autonomous theory and politics specific to sexuality must be developed” (*supra* note 6 at 309).

<sup>81</sup> Butler, “Against Proper Objects”, *supra* note 8 at 24-25.

<sup>82</sup> *Ibid.* at 25.

privileges they fix, what norms they mobilize, and what or whom these norms exclude. Critique is thus a practice that allows us to scrutinize the form, content and possible reworking of our apparent political choices; we no longer have to take them as givens.<sup>83</sup>

The critique of feminism may “reinvigorat[e] politics by describing problems and constraints anew, by attending to what is hidden, disavowed, or implicit, and by discerning or inventing new possibilities within it.”<sup>84</sup> Queer theory may be helpful in this critique, providing a way for feminism to look beyond and back at itself. In the realm of sexuality and beyond, the feminism of feminism after must be prepared to rethink the limits of its own categories and imagination, and deploy alternative analytical frames to move beyond these limitations and back again.

Queer theory should not, however, be held up as feminism’s white knight, a saviour in sex positive clothing. Queer theory also needs critique; it needs to be subject to the same analysis of what is hidden, disavowed, and implicit. Queer theory, for example, tends to normatively value subversion over normalization; the sexual over the familial; the individual pursuit of the erotic over relational care and responsibility. One need not fall back upon cultural feminism to dispute this rejection of the value of the relational. From socialist feminists and postmodern feminists debating questions of carework, to political theorists and philosophers influenced by the work of Levinas, there is a significant and sophisticated literature from which to draw in order to value the relational. Feminists and non-feminists alike have found value in the intimate sphere of relational life as a sphere with the potential to affirm selfhood, challenge hetero-normativity, and produce self-meaning. While queer theory has performed an invaluable task in attempting to affirm the value of the sexual, the erotic, the abject, it is not at all clear that it needs to be produced at the expense of the relational. Taking a step back from queer theory and affirming the potential value of the intimate/relational/familial sphere is also a moment to bring feminism and its focus on gender as an axis of power back into view. Any attempt to value the relational or familial sphere must be attentive to the extent to which this is a profoundly gendered sphere of life; a gendered sphere that has constituted women as very particular kinds of legal subjects and restricted the agency of these subjects. It is a moment to consider the gaps and lacunae created by queer theory’s lack of attention to the ways in which the legal and cultural regulation of sexuality more generally is gendered. It is a moment to insist that gender still matters.

Of course, taking a step back from queer theory must not be a return to an earlier feminism in which only gender matters. The critique of intersectionality has ensured that feminism must remain attentive to the multiple axes of power and identity. Feminism after the critique of feminism is a feminism forever changed. But, even beyond the intersectionality critique, feminism after is a feminism changed. It is a feminism that needs to be attentive to its own imaginative failings. It is a feminism

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<sup>83</sup> Wendy Brown & Janet Halley, “Introduction” in Halley & Brown, eds., *supra* note 12, 1 at 26-27.

<sup>84</sup> *Ibid.* at 33.

excited by the electrifying energy of postmodernism, critical race theory, post-colonialism, and queer theory, among others; a feminism disrupted by challenges to its very foundational concepts. Feminism after the critique of feminism must be able to tap into these high voltage power lines. It must not be afraid to return to gender, nor to rethink its meaning, its deployment, and its porous borders. In the realm of sexuality and beyond, the feminism of feminism after must be prepared to rethink the limits of its own categories and imagination, and deploy alternative analytical frames—such as queer theory—to move beyond these limitations and back again.

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